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ENVIRONMENTAL ASSESSMENT BOARD

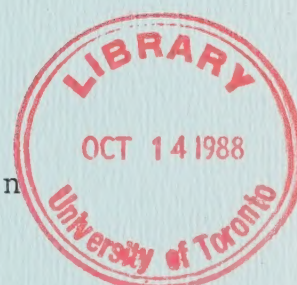
VOLUME: L

DATE: September 27th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, September 27th,
1988, commencing at 9:00 a.m.

VOLUME L

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

(iv)

I N D E X O F P R O C E E D I N G S

Witness:

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I N D E X O F E X H I B I T S

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263	Citation from the Simon case.	8600
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1 ---Upon commencing at 9:05 a.m.

2 THE CHAIRMAN: Thank you. Good morning.

3 Mr. Hunter, are you ready?

4 MR. HUNTER: Yes, Mr. Chairman. Perhaps,
5 Mr. Chairman, I might enter as exhibits the
6 interrogatories for Question No. 12 and for Question
7 No. 1 that I referred to yesterday.

8 THE CHAIRMAN: Very well.

9 MR. HUNTER: This was Question 1 of ur
10 interrogatories and then Question 12 of our
11 interrogatories that I made reference to yesterday.

12 THE CHAIRMAN: All right. Question No. 1
13 of the interrogatories filed by Mr. Hunter on behalf of
14 the Nishnawbe-Aski Nation will be 251 and Question No.
15 12 will be Exhibit No. 252.

16 ---EXHIBIT NO. 251: Interrogatory Question No. 1 filed
17 by the Nishnawbe-Aski Nation.

18 ---EXHIBIT NO. 252: Interrogatory Question No. 12
19 filed by the Nishnawbe-Aski
20 Nation.

21 MR. HUNTER: Mr. Chairman, if I might, I
22 was remiss yesterday. In attendance, the
23 representatives of my client, Mr. Benjamin Cheechoo, he
24 is not here now but he will be coming in during the
25 course of the day, he is the Grand Chief of the
Nishnawbe-Aski Nation and Charles Fox who appeared

1 before you. Mr. Frank McKay is here, he is the
2 Executive Director of the Windigo Tribal Council, and
3 Eno Anderson who is the Executive Director of the
4 Shibogama Tribal Council. And these four gentlemen and
5 others will be hopefully in increasing attendance over
6 the course of the hearing.

7 At the counsel table, at the table with
8 me is Dr. Jeff Lester. I thought as a courtesy I would
9 introduce him to the Board and to the members of MNR
10 and the other parties.

11 Dr. Lester is a barrister called to the
12 Melbourne Bar, he received his doctorate from Osgoode
13 Hall and his thesis was in the area of aboriginal
14 rights. He has been practising or he was in Canada for
15 six or seven years, he returned to Melbourne and has
16 been practising at the bar there for five years and
17 just yesterday he finished his first exam in the bar
18 admission course, Mr. Chairman.

19 THE CHAIRMAN: We wish you the best of
20 luck in your field.

21 MR. LESTER: Thank you, Mr. Chairman.

22 MR. HUNTER: I was able to get a hold of
23 Mr. Lester and we spent some time reviewing the
24 evidence of Mr. Crystal and the cross-examination of
25 Mr. Colborne, and I think as a result of that we will

1 substantially lessen our cross-examination of Mr.
2 Crystal with respect to those legal matters that he has
3 raised.

4 I would ask the Board's indulgence to
5 facilitate that to allow me a 15 or 20-minute break
6 between my cross-examination of Mr. Kenrick, my
7 cross-examination of Mr. Crystal on policy matters and
8 what will be the latter part of the cross-examination
9 which deals with "legal matters".

10 I was originally going to do that first
11 but then subsequent to our review over the course of
12 last night I would like to push that off and hopefully
13 we will have substantially reduced that portion of the
14 cross-examination.

15 THE CHAIRMAN: Very well.

16 MR. HUNTER: Thank you.

17 JOHN E. KENRICK,
18 M. MELVIN CRYSTAL, Resumed

19 CONTINUED CROSS-EXAMINATION BY MR. HUNTER:

20 Q. Good morning, Mr. Kenrick.

21 MR. KENRICK: A. Good morning.

22 MR. HUNTER: Mr. Chairman, I would like
23 to go back for one last question to the transcript on
24 7189 in relationship to comments that were made by Mr.
25 Freidin, and I hope that my question, sir, is

1 straightforward.

2 Q. Mr. Freidin stated:

3 "So Mr. Kenrick will be describing
4 stakeholders and how in fact they relate
5 to the physical environment."

6 My question, sir, is: Is it your view
7 that you have adequately described my clients, NAN and
8 the Windigo Tribal Council have been adequately
9 described in terms of how they relate to the
10 environment as stakeholders and as local and
11 traditional users?

12 MR. KENRICK: A. Keeping in mind that my
13 evidence package out of design was to stay at an
14 overview level, I believe we -- I have generally
15 discussed the uses of the resources by the
16 stakeholders.

17 The problem that I mentioned yesterday in
18 terms of data, in some cases there is a problem
19 extracting specific native use from the stakeholder
20 group, if you will. I discussed in a general sense the
21 stakeholders -- the trappers, if you will, as a
22 stakeholder group. Pulling the native component out of
23 that, I am limited by the data that's available.

24 Q. Thank you. In relationship to that
25 issue, sir, given your experience in Moosonee, given

1 your experience in the preparation of the Moosonee
2 district studies, would you be more comfortable if
3 there was a better database and if there was comparable
4 studies done across the rest of the province as
5 compared to the Moosonee study?

6 A. Yes. If I might just expand on that
7 a little. I believe we got some good data out of the
8 Moosonee exercise. We went into the communities and
9 canvassed the local people in terms of their use of the
10 resource. A couple of constraints that are on us there
11 is that very clearly has to be a cooperative venture.
12 We can go and ask.

13 I know there are some illustrations where
14 information is not - I am not sure if the right word is
15 statutory - but it is not the type of information that
16 we collect because there is a requirement to report it.
17 Trapping information, for instance, through the ceiling
18 system comes back to us. So we have information by
19 native, by species, by trap line area. It may not be
20 individual lines but native lines, so there is a fairly
21 good amount of information there.

22 Commercial fishing is the same way. That
23 information, there is a requirement to give reporting
24 back on a license. But where you get into problems
25 collecting information are those types of things like

1 the domestic food fishery or moose hunting where, in
2 some cases, it has to be cooperative if it is going to
3 work and there are illustrations where bands have been
4 reluctant to share that information with us.

5 Q. Fine. Thank you, Mr. Chairman.

6 I will now be referring to our Question
7 23.

8 MR. HUNTER: Oh, perhaps, Mr. Chairman, I
9 can introduce this as an exhibit. It is the Moosonee
10 district --

11 Q. You will have to help me here. I
12 thought it was the District Land Use Guidelines but it
13 is the background information; is that correct?

14 MR. KENRICK: A. That's correct.

15 MR. HUNTER: If I may introduce this. I
16 do not at this time have additional copies. I am led
17 to understand that MNR will provide additional copies;
18 is that correct?

19 MR. FREIDIN: Mr. Chairman, I was just
20 advised about this five minutes ago and I think there
21 are extra copies in our office. If there are I will
22 bring them over during the first break.

23 THE CHAIRMAN: Very well. We will admit
24 this as Exhibit 253.

25 MR. HUNTER: (handed)

1 THE CHAIRMAN: Thank you.

2 ---EXHIBIT NO. 253: Background information for the
3 Moosonee District Land Use
Guidelines.

4 MR. HUNTER: Mr. Chairman, I would like
5 to enter as an exhibit our interrogatories of Panel 6,
6 Question 23 which will be the subject of the next part
7 of our cross-examination.

8 THE CHAIRMAN: Exhibit 254.

9 ---EXHIBIT NO. 254: Interrogatory Question No. 23
10 posed by the Nishnawbe-Aski
Nation.

11 MR. HUNTER: Q. Mr. Kenrick, do you have
12 a copy of this, sir?

13 MR. KENRICK: A. Yes, I do.

14 Q. Thank you. Do you adopt this
15 statement as your evidence, sir?

16 A. Yes.

17 Q. Mr. Kenrick, you have indicated in
18 this document that the Class Environmental Assessment
19 recognizes the special interests that natives have, and
20 your answers are found at page 7, 153, 156, 158, 161,
21 165 and 170.

22 I would just simply like at this stage to
23 clearly identify what that information is in order that
24 we are all working from the same material. I believe I
25 have addressed previously the material and statements

1 on page 7 and if I am correct, sir, the page 7 that is
2 stated in your answer is the page 7 as under Part I of
3 the undertaking; is that correct, sir?

4 A. That's correct.

5 Q. Thank you. If we can turn to page
6 153, the interest that is recognized, if I am correct,
7 is identified at lines 15 through to 18; is that
8 correct, sir?

9 A. That's correct.

10 Q. Thank you. And if we go to 156, the
11 interest that is recognized is at lines 28 through to
12 31 with respect to the provision of public notice; is
13 that correct, sir?

14 A. That's correct.

15 Q. If we go to 158, could you please
16 identify for the Board those provisions that are
17 specific to native interests?

18 A. I believe it is line 3 through to 6
19 where it makes reference to direct written invitations
20 to all persons who received a written invitation to
21 participate, which is a reference back to the last
22 reference saying that in all cases band councils of
23 each Indian reserve in the forest management unit,
24 native communities and organizations and individual
25 members of the public with a known interest in timber

1 management planning will be notified.

2 Q. So that provision then, if I
3 understand it, outlines the provisions of the notice;
4 is that correct, sir, that is that which will be in the
5 public notice?

6 A. On page 158, is that what you are
7 referring to?

8 Q. "The public notice will normally be
9 in the form of direct written invitations
10 and general public notices usually in the
11 form of paid political advertisements."
12 That's all it says.

13 A. That's right. But I think --

14 Q. And this would apply to everybody?

15 A. But the point there is that it makes
16 it mandatory to send notices to native groups because
17 it was mandatory to send them the first notice which is
18 unlike most other groups.

19 Q. So 153 simply says that specific
20 notice will always be given to the band council, and
21 the provision at 158 is simply the form -- describes
22 the form of that public notice for the general public
23 and for -- well, and for the general public; is that
24 correct?

25 A. No, I think the main point that

1 should be brought out there is it is saying that the
2 second public notice must be sent to native groups.
3 That is the intent of that statement, by saying it must
4 be sent to all those who received the first notice.

5 Q. Okay. And that is one way in which
6 the special interests of native people are recognized;
7 is that correct?

8 A. That's correct.

9 Q. Okay. 15 -- sorry, 161. Could you
10 please identify where in those provisions the special
11 interests of natives are recognized, presumably as
12 distinct from anyone else?

13 A. Again, I believe it is line 19
14 through to 21 which is, again, an assurance that the
15 third notice of public review of the draft plan will be
16 sent to all those people who were sent the first
17 notice. And, again, that isn't a provision that's
18 there for all groups, it is a special provision that's
19 there for native groups and there is a couple other
20 groups also.

21 Additionally, one of the changes that was
22 made I believe in this version of the Class Assessment
23 is the added reference for direct verbal communication
24 to serve as an additional form of notification, and my
25 understanding of the history of that comment to some

1 extent was a preference by some native communities for
2 us to go to the community and discuss issues face to
3 face.

4 Q. Okay. If we go over to 165, is that
5 the provision there that may be particular to the
6 native community, that is 12 to 13; is that correct?

7 A. Also line 3 through 6 which, again,
8 is a requirement to send the final notice, I think that
9 is to all those people previously identified and all
10 parties known to be directly affected by timber
11 management.

12 Again, having made the provision, the key
13 section of all of that is on page 156. Having made it
14 mandatory to notify natives in the first invitation to
15 participate, the rest of these paragraphs basically say
16 it is mandatory to keep them involved through the rest
17 of the process and send them the other three processes.

18 Q. Fine. Then page 170, if you would,
19 sir. Again, as distinct from any other groups?

20 A. I believe the reference there, and
21 this is dealing with amendments?

22 Q. Yes, I believe so. Plan -- well,
23 either that or the end paragraph on the subject of plan
24 renewal.

25 A. I believe the paragraph that's

1 referred to there is the one on provision of all
2 opportunities for public consultation and application
3 of the complete MNR review and approval process, and
4 then makes a reference back to described in Part II
5 Sections 2.1.3.

6 Q. Would you direct me to the line, sir?

7 Oh, I see. So it is in plan --

8 A. 2 to 6 -- sorry, 3 to 6.

9 Q. 3 to 6.

10 "Provision of all formal opportunities
11 for public consultation and application
12 for complete MNR review and approval
13 process as described in Part II, Section
14 2.1.3. "

15 Is that correct?

16 A. Yes, that's correct, which is a
17 reference back to the previous references.

18 Q. So, therefore, the notice provisions,
19 as you have outlined them, are in part the manner in
20 which this Class EA recognizes the special interests of
21 natives; is that correct, sir?

22 A. That's correct. They are, if you
23 will, mandatory invitation to participate in the
24 process.

25 Q. Okay. And if I draw your attention

1 to paragraph 7 under Part I of the undertaking.

2 A. Page 7?

3 Q. Yes, page 7. Page 7, Part I. Could
4 you please identify for the Board where the special
5 interests of native people are addressed in those
6 provisions?

7 A. Line 16 through to the bottom of the
8 page. Actually line 14.

9 Q. So, therefore, sir, I understand the
10 position of the Ministry to be that the special
11 interests of native people are reflected by the fact
12 that their interests cannot be taken into consideration
13 in this class document because of treaty rights; is
14 that correct, and they can only be taken into
15 consideration at the local level?

16 Is that how the special interests of
17 native people are recognized?

18 A. I believe Mr. Crystal in some of his
19 evidence has worded it a little better than that. My
20 understanding of those paragraphs make a distinction --
21 if I can just refer to my notes in my witness
22 statement--

23 Q. Mr. Kenrick--

24 A. --I will give you an answer.

25 Q. --I am trying to deal with the words

1 on the paper.

2 A. I believe all that page says, and I
3 believe it is the Ministry's position supported by the
4 Ontario Native Affairs Directorate, is that the issues
5 of treaty and aboriginal rights cannot be settled in
6 this assessment or this document or this process, but
7 that the impact -- inasmuch as native people are local
8 and traditional users and users of resources, the
9 impacts of forest management on their use of the
10 resource can be dealt with.

11 Q. But only at the local level?

12 A. Generally they are dealt with at the
13 management planning level, that's where issues are
14 resolved. That's, I believe, the reference to local.

15 Q. Well, let's be clear. So what does
16 local mean?

17 A. Local level --

18 Q. At the district level?

19 A. Local level in this process I would
20 say is at the management unit level.

21 Q. And where is the management unit
22 level?

23 A. The district level.

24 Q. And other than the reference to the
25 notice provisions in this document, what guidelines,

1 directions, policy objectives would be established in
2 this document which would affect those managers and
3 that level of decision making in attempting to deal
4 with impacts and the interests of the native community?

5 A. To my understanding, those are the
6 references specifically to native people but two
7 cautions: One, that the process requirements generally
8 through the document don't exclude natives, but if you
9 are looking for specific references to natives those
10 are the pages they are found on.

11 MR. FREIDIN: Mr. Chairman, I just don't
12 want this cross-examination to go on without me
13 repeating what I have said a number of times in the
14 past, that the environmental assessment in the
15 Ministry's opinion is not only what's in the written
16 document but what is filed by way of witness statements
17 and what is heard by way of oral evidence.

18 And, therefore, the Ministry takes the
19 position that the special interests of native people
20 has been spoken to in more detail than has been
21 referred to by Mr. Kenrick in the document and I refer
22 specifically to the evidence of Mr. Crystal.

23 And as I have indicated, in the later
24 panels which deal with the activities and their
25 potential effects on the environment, references will

1 be made to how certain activities can have an impact on
2 the use of resources by native people. So it is not
3 just what's in that document.

4 THE CHAIRMAN: Well, I am sure Mr. Hunter
5 and other counsel are aware of the Board's view of the
6 EA process itself comprising more than just the
7 Environmental Assessment Document as submitted to the
8 Minister under Section 5(1).

9 MR. HUNTER: Thank you, Mr. Chairman.

10 Well, I have a bit of a problem, sir. In
11 my view - correct me if I am wrong - that statement
12 represents a planning opinion, it is an opinion of this
13 witness that this document at least and arguably,
14 according to my friend, evidence that is to come in the
15 future will recognize the special interests that
16 natives have.

17 I think what MNR has done has put the
18 barn before the horse or the cart before the horse.
19 They have said that native interests have been
20 recognized.

21 My argument is very simply: Show us
22 where those interests have been recognized in the
23 evidence that has been presented today and I think I am
24 fully entitled to ask Mr. Kenrick to identify to this
25 Board where, in his opinion and in his evidence, those

1 interests have been recognized and that if this Board
2 is not satisfied that there is any evidence before you
3 with respect to those matters in terms of his evidence,
4 that I am fully -- that I am in the position that if I
5 can present to you evidence which indicates that those
6 interests have not been addressed, to ask you to give
7 no weight to the statements that he has made because
8 any evidence which is going to be introduced in the
9 future is not evidence which Mr. Kenrick, I am
10 presuming, will be here to answer.

11 MNR is trying to bifurcate their evidence
12 as it goes in, they have stated clearly that the
13 special interests of native people have been identified
14 and that they have been met in this Class EA.

15 THE CHAIRMAN: Well, there is no doubt
16 whatsoever, Mr. Hunter, that you can question properly
17 in cross-examination of Mr. Kenrick what in his opinion
18 he believes to be the status of this document relative
19 to native interests, and whether or not there is
20 further evidence before the Board is up to the parties
21 to put it before the Board at an appropriate time.

22 MR. HUNTER: Okay.

23 Q. Mr. Kenrick, would you please advise
24 the Board as to, in your opinion, what the special
25 interests are that natives have?

1 MR. KENRICK: A. I am not sure I
2 understand your question. The interrogatory that
3 was --

4 Q. You have stated, sir, that the Class
5 EA recognizes the special interests that natives
6 generally have in natural resource matters.

7 A. In the Class Assessment Document, the
8 answer to that is the text found on page 7, 153, 156,
9 158, 161, 165 and 170.

10 Q. Is it your opinion that the Class EA
11 as presented in this document satisfies the special
12 interests that natives may have? Yes or no, sir.

13 A. I believe it is the position of the
14 Ministry that that is the way -- and the position of
15 the Ontario Native Affairs Directorate that that is an
16 adequate way of dealing with the topic in the Class
17 Assessment Document.

18 Q. So you adopt that position, sir?

19 A. Yes.

20 Q. So, therefore, the special interests
21 of native people are adequately dealt with in this
22 document?

23 A. With the caveat that the assessment
24 is more than just the document and it is dealt with in
25 witness statements, two major sections on natives in

1 this one.

2 Q. I think that I was very careful with
3 my language.

4 A. Okay.

5 Q. I said in this document.

6 A. Yes.

7 Q. If that is the case, then where is
8 the evaluation of the impacts on those special
9 interests in this document, and I will extend back, and
10 in the evidence led to date?

11 A. Again, my role as part of this panel
12 is not to deal with impacts. There are subsequent
13 panels that are going to be dealing with that.

14 THE CHAIRMAN: Mr. Kenrick, that does not
15 respond to the question. Where in this document being
16 the Class EA Document, Exhibit No. 4, are impacts on
17 native peoples dealt with?

18 MR. KENRICK: I don't believe
19 specifically they are, sir.

20 THE CHAIRMAN: Thank you.

21 MR. HUNTER: Q. One last point, Mr.
22 Kenrick. Your response to Question 23, the word
23 generally is inserted. Yesterday in cross-examination
24 I believe you inserted the word generally into your
25 response. I will have to go back -- sorry, I will have

1 to have the transcript, I don't have it to have the
2 exact words.

3 When you use the word generally, what
4 does that mean? You did use it in your direct evidence
5 yesterday, you have used it in this panel. When you
6 say generally -- I believe the context yesterday was
7 yes or no, yes or no, and you said: Well, generally
8 yes. And then I said: Does generally yes mean yes,
9 and you said: Yes, generally.

10 What I am concerned about, Mr. Chairman,
11 and I just don't have the ability to be here all the
12 time and I don't want to be overly picky or overly
13 aggressive, sir, but the bottom of my stomach is this
14 real concern that every time there is a response
15 "generally yes" or "generally no" that my friend Mr.
16 Freidin can then come back and say in reply: Well, you
17 said generally yes, now what are the exceptions. And
18 that is really why, I am being very candid about it,
19 why I am addressing this issue now.

20 When you say generally, what
21 qualifications, what exceptions are you anticipating?
22 In other words, can we remove that word generally from
23 that statement and say the special interests that
24 natives have in natural resource matters, or am I going
25 to hear something six months from now that attempts to

1 qualify the word generally by a whole range of
2 exemptions?

3 MR. KENRICK: A. My understanding of the
4 use generally used in that context, the way I would use
5 it, stems from my belief that the process can deal with
6 the impacts of timber management on native people
7 inasmuch as they are local and traditional users and we
8 have used that term before and defined it.

9 Q. Generally?

10 A. Well, if I may continue.

11 Q. Yes, of course.

12 A. Inasmuch as they are local people
13 with specific interests, whether those be historic
14 sites or uses of trap lines or sources of water or uses
15 of various game and fish, those impacts can be dealt
16 with and that is the way I would use -- that is how
17 specific I would use the word generally.

18 Q. Thank you.

19 THE CHAIRMAN: So is what you are saying
20 that you use the word generally in terms of the way
21 impacts are dealt with as opposed to describing the
22 interests themselves?

23 MR. KENRICK: Correct.

24 MR. HUNTER: Q. Once again, Mr.

25 Chairman, Mr. Kenrick, I draw your attention to page 7

1 of the Class EA, Part I and I draw your attention to
2 line 28:

3 "However, the potential effects of timber
4 management on the actual activities and
5 pursuits of native people are amenable to
6 resolution at the local level."

7 You have indicated the local level means
8 the district level during the planning of timber
9 management operations.

10 Correct me if I'm wrong, sir, but are you
11 suggesting or does this document suggest that the
12 potential effects on native use and native communities
13 can only be dealt with in the yearly operational plans
14 as opposed to five-year plans, 20-year plans or, in
15 fact, in the creation of the forest management
16 agreement itself?

17 What is the relationship between the
18 evidence on page 7 and the fact that there can -- the
19 statement that there can be resolution at the local
20 level, the relationship between that and the actual
21 planning process as I have attempted to outline it to
22 you?

23 A. I am not -- when you use the word
24 local I am not -- that doesn't make a distinction
25 whether it is the 20-year time frame or a 10-year or a

1 five-year or the annual work schedule. Those are all
2 done at a local level.

3 Q. So, in other words, native interests
4 can be addressed at the level of the establishment of
5 the forest management unit; is that correct?

6 A. I believe so.

7 Q. At the forest management unit level?

8 A. Some issues are -- again, it depends
9 what the issue is, but some issues can be best dealt
10 with at the preparation of the forest -- the plan for
11 the unit, some issues are better dealt with on the
12 five-year operational plan, other issues are better
13 dealt with at the time of the annual work schedule.

14 It depends sort of the level of detail
15 and whether it is a specific road or roads in general
16 or the impact on a specific stand, if you will. That
17 statement is not -- is meant to be all encompassing of
18 all of the plans for those time frames, not just one of
19 them.

20 Q. Well --

21 A. In other words, there is repeated
22 involvement in the forest management plan and the
23 five-year operating plan and the annual work schedule.

24 Q. So that statement then does not
25 preclude native involvement. Just so we are absolutely

1 clear on the record, that statement there is not
2 intended or should not be interpreted to mean that
3 native interests cannot be dealt with -- let me just go
4 through one at a time, and I appreciate the fact that
5 there may be different levels of information required
6 at different levels of decision-making, I can live with
7 that, I just want to understand the following:

8 Native interests are not precluded in
9 being taken into consideration in the establishment of
10 an FMU; is that correct, sir?

11 A. The establishment of an FMU, I am not
12 sure what you are referring to there.

13 Q. When an FMU is delineated -- let me
14 go down to an FMA. When terms and conditions are
15 established in the forest management agreement, can
16 native interests be taken into account in the
17 establishment of the terms and conditions for a forest
18 management agreement?

19 A. You are talking to some extent about
20 a process that is separate from the three planning
21 levels in forest management planning and I am not sure
22 where you are drawing the line between licensing, which
23 I understand is not part of this undertaking, and the
24 forest management planning activity.

25 Inasmuch as there is a plan prepared, a

1 management plan for a forest management unit, yes,
2 natives are involved, can be involved and the process
3 applies there as well as any other type of unit,
4 whether it be FMA or Crown or company.

5 Q. Let me just try one more time. Can
6 native interests be taken into account in the
7 establishment in terms and conditions of a forest
8 management agreement?

9 THE CHAIRMAN: You have to speak a little
10 louder, Mr. Hunter, the court reporter is having
11 trouble.

12 MR. KENRICK: Inasmuch as those terms and
13 conditions are developed within the forest -- the
14 timber management planning process, yes.

15 MR. HUNTER: Q. And does the timber
16 management planning process come after an FMA has been
17 established?

18 MR. KENRICK: A. My understanding is
19 yes.

20 Q. So, therefore, native interests
21 cannot be taken into consideration in the establishment
22 of an FMA?

23 A. You are getting into an area of
24 licensing I don't feel that comfortable in, sir.

25 There is external to this document - and

1 I don't know it in enough depth to get into detail -
2 but there are provisions for public input during the
3 FMA process, the creation of them which is separate
4 from what is in this document. I don't have that
5 information.

6 If your questioning is related to the
7 timber management planning process, this document
8 starts at one step after that and that is the forest or
9 timber management planning process itself. Given that
10 there is a licence in place, whether it be an FMA or
11 some other form of tenure, then the forest management
12 planning process would take over and the provisions of
13 this document would apply.

14 Q. That is of some help because I am
15 trying to understand the levels of decision-making in
16 which native people participate and what I hear you
17 saying, correct me if I'm wrong, is that they cannot
18 participate in the establishment of the forest
19 management agreement but they can participate in the
20 establishment of the timber management planning process
21 which, as I understand it, is subsequent to the
22 establishment of a forest management agreement.

23 I am not asking us to get involved, I
24 appreciate there are other panels on this whole
25 subject, but I want to at least try to deal with that

1 basic concept. Now, am I right or am I wrong?

2 A. You are wrong.

3 Q. Tell me why I am wrong.

4 A. This process doesn't, if you will,
5 safeguard the interests that you are talking about in
6 the creation of an FMA. But there are other provisions
7 that are requirements to have public input and
8 involvement and review in the process that results in
9 an FMA.

10 Q. And where are those, sir?

11 A. They are not in this process and I am
12 not -- that isn't my area of expertise.

13 MR. FREIDIN: It was the subject matter
14 of evidence by Mr. Armson in Panel 2, I believe. It
15 might have been 3.

16 MR. HUNTER: Q. Does that same logic
17 then, sir, apply to what you have just said, to forest
18 management units, to company management units, to Crown
19 units?

20 MR. KENRICK: A. In terms of the
21 establishment of the unit in the first place?

22 Q. That's correct, sir.

23 A. Yes.

24 Q. And the terms and the conditions of
25 the establishment of that unit?

1 I have read an FMA, it is a very thick
2 document which contains a whole range of requirements
3 or obligations as between the province, the Crown and a
4 particular company. That is what I am referring to as
5 terms and conditions.

6 A. Perhaps I misled you. On something
7 like a Crown unit, there isn't a parallel document to
8 an FMA with those types of terms and conditions in it.
9 In other words, there isn't a contract agreement
10 between the Crown and the Crown.

11 Q. With respect to timber management
12 operations, are they based on 20-year plans, five-year
13 plans or on annual work schedules or on all of the
14 above?

15 A. All of the above.

16 THE CHAIRMAN: Mr. Kenrick, could I just
17 clarify something. Are you saying that in the initial
18 creation of a forest management agreement or a forest
19 management unit there is an analogous process or there
20 is a process which allows for public input and that
21 that process is a different process than the timber
22 management planning process which comes into play
23 initially following the creation of the agreement for
24 the unit?

25 MR. KENRICK: There are some

1 similarities. There are requirements for public open
2 houses, for instance, notices in newspapers, where
3 boundaries are displayed. Again, I am a little out of
4 my league here, but ground rules that are going to
5 apply to that FMA are posted for public comment.

6 THE CHAIRMAN: Okay, I understand that,
7 but what I am saying is: What we are dealing with is
8 the timber management planning process as described in
9 the Class EA and by various panels.

10 MR. KENRICK: Okay.

11 THE CHAIRMAN: That whole process and how
12 it deals with the interests of users of the forest,
13 other users or the public at large is separate from
14 whatever other provisions there may be in existence
15 respecting public input in the creation of forest
16 management agreements or forest management units.

17 MR. KENRICK: That's correct, that is my
18 understanding.

19 THE CHAIRMAN: Thank you.

20 THE CHAIRMAN: Sorry, Mr. Hunter.

21 MR. HUNTER: Mr. Chairman, could I just
22 have literally 30 seconds.

23 Q. Mr. Kenrick, if again we can go back
24 to Part I, page 7, there is a phrase at page -- at line
25 28:

1 "However, the potential effects of timber
2 management on the actual activities and
3 pursuits of native people are amenable to
4 resolution at the local level."

5 When those words "actual activities" were
6 inserted what was contemplated or, in your opinion,
7 what are the actual activities which ought to be taken
8 into account in the planning process?

9 MR. KENRICK: A. I am not sure that I
10 can provide a comprehensive list, but by way of an
11 illustration, if that will get at it, if the actual
12 activity is trapping, the potential effects of timber
13 management on the trapping activity or a particular
14 trap line being one of the pursuits of native people, I
15 believe can be dealt with during the timber management
16 planning process, and different panels coming up later
17 will talk about the impacts on trapping and trap lines
18 and how those can be mitigated.

19 That is what I believe the word actual is
20 inserted there for. It is not limited to trapping,
21 that is just an illustration.

22 MR. MARTEL: Could I ask a question then.
23 The decision to proceed with an FMA has already
24 taken -- has already been taken into consideration
25 before the concerns of the native people are even dealt

1 with; is that right? I mean it is an aftermath.

2 MR. KENRICK: I guess, sir, I view the
3 establishment of an FMA as a licensing decision. It is
4 a form of tenure, a contract between the Crown and a
5 company and that happens before this process starts,
6 that's correct.

7 MR. MARTEL: So that then the native
8 community somewhere has to fit in to whatever the final
9 decisions are made whatever it is, good, bad or
10 indifferent? I mean, the reality is the decision is
11 made and then we push them into a niche; is that right?

12 MR. KENRICK: I wouldn't describe it that
13 way, sir. I would like to think - and, again, this
14 isn't something that I deal with on a regular basis -
15 that the decisions to grant licences considers those
16 types of things.

17 MR. HUNTER: Q. Excuse me, you said they
18 do consider those type of things?

19 MR. KENRICK: A. I said I would like to
20 think they do. Again, I don't make licensing
21 decisions.

22 Q. And this Class EA offers no relief
23 with respect to that particular problem; is that
24 correct, sir?

25 A. My understanding is the four -- the

1 timber management planning process as described here
2 starts after a licensing decision has been made.

3 THE CHAIRMAN: Well, just going back to
4 that one point. When you indicate that in the
5 establishment of a forest management agreement there is
6 an opportunity for public input which does not exclude
7 native peoples--

8 MR. KENRICK: That's correct.

9 THE CHAIRMAN: --is it your understanding
10 that there are analogous provisions for notice under
11 that process such as we are finding are described in
12 the Class EA Document; in other words, a mandatory
13 invitation to participate in the --

14 MR. KENRICK: Without checking I am not
15 sure. I know that there is a requirement to use very
16 broad public notices. It is one of the requirements
17 where we must use, for instance, newspapers. Whether
18 it specifically mentions natives, I just have to review
19 the circular that covers that.

20 THE CHAIRMAN: Okay.

21 MR. HUNTER: Thank you, Mr. Chairman.

22 Q. Mr. Kenrick, could I please draw your
23 attention to page 7450 of your evidence.

24 MR. FREIDIN: Do you know what volume
25 that is?

1 MR. HUNTER: September 7th, 1988.

2 MR. KENRICK: 7450?

3 MR. HUNTER: 7450.

4 I am embarrassed, Mr. Chairman, I was
5 trying to understand the Roman numerals but I couldn't
6 remember if the thing came after whether it was 44 or
7 not.

8 MR. CAMPBELL: Mr. Chairman, I may note,
9 I made a motion to the court reporters that they ought
10 to adopt numbers instead of Roman numerals, but you can
11 see by the fact that it is continuing with Roman
12 numerals that it was like most of my motions, rejected.

13 THE CHAIRMAN: Is there any unalterable
14 custom to use Roman numerals?

15 THE COURT REPORTER: The offices requires
16 it strictly for continuity.

17 THE CHAIRMAN: Well, It would probably be
18 easier I think, particularly since these are being
19 deposited right across the province in many
20 depositories.

21 Would you mind speaking to your office to
22 see if we can get that changed?

23 THE COURT REPORTER: Sure.

24 MR. HUNTER: Somebody had to stand up and
25 admit ignorance.

1 THE CHAIRMAN: You have provided an
2 invaluable service for all of us, Mr. Hunter.

3 MR. HUNTER: I am very happy.

4 Q. Mr. Kenrick, if I could take you to
5 7450, at lines 20 through to 23 -- sorry, let me start
6 at line 17:

7 "Most frequently, however, our staff
8 across the province are dealing with
9 local bands, band councils, band chiefs
10 or individual natives to discuss items of
11 local concern. Frequently these items
12 include local fishing, hunting and
13 trapping matters and do include matters
14 such as timber management adjacent to
15 reserve lands."

16 From your experience, what percentage of
17 your time - not exclusively in relation to timber
18 management - what percentage of your time when you were
19 a manager in Moosonee did you spend in dealing either
20 directly or indirectly; that is through papers, from
21 discussions on native issues in relationship to
22 resource matters?

23 MR. KENRICK: A. 70, 80 per cent.

24 Q. And in that regard, sir, what
25 percentage of your time would you be dealing with

1 matters in relationship to forestry activity and
2 timbering activity?

3 A. In Moosonee it would be a minor
4 component of that just because there isn't an active
5 industry there. There were some, but hunting, fishing
6 and trapping issues--

7 Q. Were predominant.

8 A. --were the predominant ones.

9 Q. In relationship to your colleagues in
10 northern Ontario, and I am talking now strictly within
11 NAN, though I appreciate that it is a guess and it is
12 an estimate, would their amount of time be the same as
13 yours; that is, in dealing with and working with native
14 communities?

15 A. I believe that for the tier of
16 districts, if you will, that cover the far north,
17 Geraldton, Sioux Lookout, Moosonee, their
18 percentages -- and perhaps Kenora, their percentages
19 would approach perhaps the amount of time we were using
20 in Moosonee. I guess the difference I see there is
21 that almost 100 per cent of our residents in the
22 Moosonee district were native people.

23 I think the percentage would drop as the
24 proportion of native people dropped within the
25 district. That would be -- I wouldn't care to put a

1 number on that.

2 Q. But you are not uncomfortable that 50
3 per cent of their time, for example, in Sioux Lookout
4 as a guess.

5 A. Generally, the best it would be is a
6 guess.

7 Q. Would it be reasonable to assume that
8 they would have greater involvement in timbering
9 activities in those districts than in yours?

10 A. Yes. I guess the other observation
11 from Moosonee and also since Moosonee is that I think,
12 it would be a fair conclusion that Ministry managers
13 are increasingly spending time on, whatever the
14 percentage was historically it is probably more now. I
15 am only speaking of relatives, that's all.

16 Q. Mr. Kenrick, if, in your opinion, it
17 could be shown that procedural requirements and
18 substantive impacts for native communities and on
19 native interests were not a treaty issue or could be
20 handled in such a manner that they would be neutral;
21 that is, the treaty issues would be neutral, would you
22 object, for the purposes of this Class EA, that general
23 guidelines, general policy objectives be inserted into
24 the Class EA in such a manner that direction of a
25 procedural and substantive nature be given to district

1 managers for the purposes of their relationship and the
2 management of those relationships with the native
3 communities in this subject area?

4 If the treaty issue were not on the
5 table, page 7 was not there as it is written, would you
6 object to terms and conditions being inserted into an
7 order which would affect, presumably within reason, how
8 managers from a procedural perspective relate to the
9 native communities and how certain substantive issues,
10 impact issues should be dealt with?

11 THE CHAIRMAN: Is there a suggestion, Mr.
12 Hunter, that that cannot be the case?

13 MR. HUNTER: Sorry, Mr. Chairman?

14 THE CHAIRMAN: Is there a suggestion
15 that - if I understood your question properly - the
16 Board cannot, in its decision, deal with exactly what
17 you are doing?

18 MR. HUNTER: No, I am sorry, sir, I don't
19 want you to misunderstand this. No, I believe very
20 strongly or I wouldn't be here.

21 I am asking Mr. Kenrick if, in his
22 personal opinion, would he share the view that terms
23 and conditions could be established in the Class EA
24 that would deal with impacts on the native community,
25 and when I refer to that I am referring to substantive

1 concerns and if, for the sake of discussion, we were
2 not happy with the procedural requirements as outlined
3 in this Class EA, that alternatives or better ways of
4 dealing with those issues could be found and those
5 would be terms and conditions under the order of the
6 Board. I am asking his personal opinion on it. He
7 can say yes or no.

8 MR. KENRICK: As a manager I would feel
9 more comfortable with the procedural type guidelines
10 that says that if this type of an issue arises here is
11 a way of getting at a solution.

12 Where I get a little leery is if the
13 nature of the issue is, I will just use trapping, that
14 it will -- the decision will be this. As a manager I
15 think I would enjoy a little more flexibility to deal
16 with the issue. Those types of --

17 MR. HUNTER: Q. Would up the level of
18 principle?

19 MR. KENRICK: A. Yes, I don't have
20 trouble with that.

21 MR. HUNTER: Thank you. Which leads me,
22 Mr. Chairman, if I might, to introduce an exhibit.
23 This is a class assessment which was prepared, the
24 proponent was Ontario Hydro, the class assessment was
25 approved by the Ministry of the Environment.

1 THE CHAIRMAN: Exhibit 255.

2 ---EXHIBIT NO. 255: Copy of Class Assessment re:
3 Ontario Hydro.

4 MR. HUNTER: Mr. Chairman, I never
5 thought I would stand in a public forum and actually
6 say what I am going to say.

7 THE CHAIRMAN: We were just commenting up
8 here, we did not think you would either. Go ahead,
9 take a run at it.

10 MR. HUNTER: Take a run at it. Mr.
11 Chairman, this is a Class Assessment which is approved,
12 as I have stated, by the Ministry of the Environment.
13 I certainly do not want to leave any impression that
14 this is the be all or the end all, but this is --

15 MR. CAMPBELL: Why not?

16 MR. HUNTER: We have to remember which
17 hats we are wearing, Mr. Campbell, don't we? The day I
18 thought I would actually have to make Mr. Campbell look
19 good, and this does not sit well on me, sir.

20 THE CHAIRMAN: Well, I am sure you will
21 have other days.

22 MR. HUNTER: Oh, yes. Well, let's hope
23 so. It is a long road.

24 Mr. Chairman, this document was prepared,
25 as I have said, by Ontario Hydro and in the -- I am not

1 exactly sure which stage, sir, I mean, you just do
2 these things, you don't know which box you will fall
3 into when you do it.

4 Mr. McKibbon and I, along with Mr. Fox
5 and other members of Windigo Tribal Council, engaged in
6 rather substantial and often pleasant discussions with
7 Ontario Hydro, the purpose of which was to try to
8 require Hydro, at least at the information obtaining
9 stage, gathering stage and at certain levels of the
10 decision-making stage to recognize native interests and
11 to insert such, as I have said, into the
12 decision-making process.

13 On Figure 1 I would simply draw your
14 attention to the top bar -- Figure 1 after page 11 and
15 I draw your attention, if I might, to what is the
16 horizontal line. If you turn the page on its side it
17 is a little easier for you, and you will notice under
18 the heading Land Use, that inserted in there is native
19 land uses, hunting, trapping, gathering.

20 You will notice commercial fishing
21 further down the page, you will notice native fishing
22 still further down the page, and while these matters do
23 not specifically relate per se to native communities,
24 we were satisfied that the categories community
25 services and lifestyle and culture were sufficiently

1 broad so that they would reasonably include native
2 concerns.

3 Then I would draw your attention, sir, to
4 page 67 at the back in which it is clearly identified
5 the effects that Hydro has done here, they have
6 attempted to enumerate anticipated effects, anticipated
7 mitigation measures in their application; that is, at
8 what point in time these issues would be dealt with.

9 And, again, we were satisfied in the
10 consultation process with Hydro that the general
11 categories, by and large, if applied appropriately
12 would be sufficient to meet our concerns.

13 Then at the back on page 67, under 3.11,
14 clearly recognizing minimized impacts on traditional
15 native hunting, fishing, trapping and gathering
16 practices and patterns.

17 As I have indicated, we were satisfied,
18 not happy, but satisfied that the general provisions
19 that were there could meet native interests. For
20 example, 3.3: Inform local residents prior to
21 construction.

22 MR. FREIDIN: Mr. Chairman, I think he
23 can put the document to the witness but I don't know
24 whether Mr. Hunter should be giving evidence as to
25 whether it was satisfactory to his client. I mean, his

1 client should be saying something satisfactory.

2 I mean, I don't like -- I know most
3 district rules don't apply, but somewhere we have to
4 draw the line between what is evidence and what is
5 cross-examination.

6 THE CHAIRMAN: Well, I think, Mr. Hunter,
7 taking into account what Mr. Freidin has said, I do not
8 feel that you have really crossed the line, frankly, in
9 terms of making a general statement that you, as
10 counsel for your clients, were satisfied with the
11 results of this, but it is cross-examination and
12 perhaps if you want to utilize this document in some
13 way with the witness panel it would be more
14 appropriate.

15 MR. HUNTER: Thank you.

16 Q. Mr. Kenrick, is it possible that the
17 Ministry of Natural Resources would consider and adopt
18 some of the forms and some of the procedures as
19 identified in this Class Assessment for the purposes of
20 this Class Environmental Assessment?

21 MR. KENRICK: A. I don't know.
22 Logically I can't see a problem with it. I would have
23 no problem with a checklist like that, for instance,
24 and it doesn't part very far from other checklists that
25 I have seen, in fact, in some of our own documents.

1 I think some of the future panels that
2 are dealing with impacts will show that we do in fact
3 consider most of the things that are on these lists
4 anyway. Whether there is a formal list that includes
5 exactly those words I am not sure, but I don't see the
6 difference --

7 Q. Do those panels do so in relation to
8 native interests?

9 A. Again, we may be dealing with words.
10 I believe the panels will deal with minimizing impacts
11 on local and traditional users, local trapping and
12 hunting and gathering which includes natives and if the
13 question is by putting into the guideline package the
14 word natives, that...

15 Q. If Ontario Hydro -- the Ministry of
16 Environment which approved this document did not see
17 treaty issues as a concern with respect to the
18 incorporation in the Class EA of a recognition of
19 native interests, why couldn't MNR do the same thing
20 in its Class EA?

21 A. I am not sure I understand your
22 question. Are you suggesting there is a reference to
23 treaty in here?

24 Q. No, I'm not, I am saying there is
25 absolutely no reference to treaty issues. There is

1 absolutely no prohibition on attempting to insert into
2 the Class Assessment Document itself - which that is
3 what this is--

4 A. Yes.

5 Q. --a clear recognition of an attempt
6 to incorporate native information into the
7 decision-making process and to clearly recognize the
8 need to mitigate. If Mr. Freidin thinks I am leading
9 evidence I will simply refer to the sections -- why if
10 Hydro and MOE had no concerns about treaty issues when
11 this was done, why ought -- or why are those concerns
12 registered in this Class Assessment?

13 MR. KENRICK: A. I don't know the answer
14 to that question.

15 Q. Mr. Crystal?

16 MR. CRYSTAL: A. Well, the only thing
17 that comes to my mind is I am not certain that treaty
18 and aboriginal rights were not in some indirect way a
19 background reason for Hydro to have taken the approach
20 that it did.

21 Although there is no explicit statement
22 of that in the document, and I haven't looked at the
23 document, but you tell me that there isn't and I accept
24 there isn't.

25 Q. No, there are none.

1 A. Yes. I still -- it is difficult to
2 devine the reason for putting those concerns on those
3 checklists. I don't know that -- perhaps it is in the
4 document - I don't know that the reasoning for doing
5 things in the way that they did it in that document,
6 perhaps that is in the document, I don't know.

7 But I would think that the existence of
8 treaty and aboriginal rights, that that issue has come
9 to the forefront of public issues, is probably in some
10 way attributable to that checklist.

11 Now, I know that you don't agree with
12 that, but that's my view, that the people who drafted
13 that document very well - I don't know for certain that
14 they did - but they very well may have had a concern
15 about treaty and aboriginal rights in their minds when
16 they prepared that, although they did not explicitly
17 state that.

18 Q. Well, my friend would be saying I am
19 giving evidence but I indicate to you, sir, that
20 throughout the whole course of the negotiations that
21 subject never came up.

22 A. That may be.

23 Q. That's all I am saying.

24 A. That may be. I think that one of the
25 reasons that we raise treaty and aboriginal rights in

1 this forum was because it was -- we thought that it was
2 more appropriate to bring that issue to the forefront,
3 shine a light on it, determine whether it had any
4 effects on the undertaking, perhaps it does and perhaps
5 it doesn't, but let's be aware of it.

6 I think that perhaps in this exercise
7 that was not done and that I don't really know why
8 those provisions are put in there. But I can tell you
9 that it is very possible, in my view, that it did have
10 something to do with an indirect connection to treaty
11 and aboriginal rights. It very well may.

12 Q. Well, Mr. Crystal, it didn't happen
13 that way. The original document did not refer to --

14 A. That may be. I fully accept that.
15 That may be, that they didn't make reference to it, but
16 that doesn't mean that it was not a factor in the
17 decision-making process. It can be an unstated factor.

18 Q. Fine.

19 THE CHAIRMAN: Just going back one
20 moment, Mr. Hunter. Mr. Kenrick, you were asked the
21 question: Did you see any problem with including
22 similar type statements in the Class EA before us as
23 were made in this Hydro Class EA.

24 And, Mr. Hunter, we are at a point in
25 time where the Class EA Document is completed, not the

1 Class EA process but the document, Exhibit No. 4, is in
2 a form which does not contain similar provisions as the
3 Ontario Hydro one.

4 MR. HUNTER: Yes, sir.

5 THE CHAIRMAN: And when you are asking
6 Mr. Kenrick would he have any objections to the present
7 Class EA containing those, in what form are you asking
8 that? Obviously they cannot go in this, this one is
9 completed. But are you saying, would he have any
10 objections to this being part of the present process,
11 presuming --

12 MR. HUNTER: Well, I am presuming, Mr.
13 Chairman, at some point we are going to stand before
14 you and ask you to amend, reject, accept that which you
15 have before you.

16 THE CHAIRMAN: So you are asking him in
17 the form of an amendment, in effect?

18 MR. HUNTER: That's correct, sir.

19 THE CHAIRMAN: Okay. I just wanted to
20 clear that up.

21 MR. HUNTER: I apologize.

22 THE CHAIRMAN: Thank you.

23 MR. HUNTER: As I understand it, someone
24 is going to be writing terms and conditions and
25 presumably that is something that MNR will be

1 preparing.

2 THE CHAIRMAN: Well, as you know from our
3 recent ruling, we have provided that MNR is going to
4 provide terms and conditions, as well as a statement as
5 to what decision they are requesting from the Board at
6 the end of Panel 10--

7 MR. HUNTER: Yes, sir.

8 THE CHAIRMAN: --of their evidence and
9 then we have asked all other parties to do the same
10 thing on a without prejudice draft basis by the end of
11 the Ministry's case.

12 MR. HUNTER: I think all I am -- I guess
13 I am really hacking my way through an open door.

14 THE CHAIRMAN: Well, we just want to be
15 sure whether we should open it wider or--

16 MR. HUNTER: Or close it.

17 THE CHAIRMAN: --or close it.

18 MR. HUNTER: It would be more fun if you
19 closed it.

20 We have to allocate our resources, sir,
21 and try to, in the absence of not knowing what's going
22 to be said some time about direct impacts, we simply
23 have to presume that what you see is what you get, and
24 work from that information.

25 And, therefore, sir, as we allocate our

1 resources, we have to intuit how we are going to
2 respond and have a very clear sense -- have some sense
3 of where we want to go and what amendments -- what
4 areas we want you to reject and where there are some
5 possible areas for amendment.

6 THE CHAIRMAN: Okay.

7 MR. HUNTER: I am simply attempting to
8 understand what some of that range may be.

9 THE CHAIRMAN: And I think it is a fair
10 line of questioning that if you identify an area that
11 is not included in the documentation that you feel
12 should be, whether or not a particular witness or a
13 panel would have any objections to it being so included
14 by way of an amendment.

15 MR. HUNTER: Sir, perhaps we could take a
16 break, is that possible?

17 THE CHAIRMAN: Okay. 20 minutes.

18 MR. HUNTER: Thank you.

19 THE CHAIRMAN: Thank you.

20 ---Recess taken at 10:25 a.m.

21 ---Upon resuming at 10:50 a.m.

22 THE CHAIRMAN: Thank you. Be seated,
23 please.

24 Mr. Hunter, I would just like to remind
25 you that the Board is going to have to rise at twelve

1 just today, so please structure your examination around
2 that.

3 MR. HUNTER: Yes, Mr. Chairman. I am
4 going to try to finish the cross-examination of Mr.
5 Kenrick and then the first part of the
6 cross-examination of Mr. Crystal by twelve.

7 I certainly hope in fact we might even
8 finish a few minutes earlier than that and, if that is
9 the case, we can take the break. The 20 or 30 minutes
10 that I would have required to review the materials with
11 Mr. Lester can be dealt with over the lunch break.

12 THE CHAIRMAN: Okay.

13 MR. HUNTER: Q. Mr. Kenrick, if you
14 would, sir, in the transcript, 7217, Volume --
15 September 6th, I presume 43, September 6th, '88, at
16 7217.

17 MR. KENRICK: A. I have it.

18 Q. In cross-examination -- sorry, Mr.
19 Freidin was leading you in evidence sir, you stated:

20 "In those more detailed cases we tend to
21 focus on those items which most directly
22 are affected by our decisions. We
23 tend to concentrate on those areas where
24 the potential risk of doing harm is most
25 apparent..."

1 And then you go later on to say:

2 "What we expend those efforts on will be
3 determined to a large extent by what the
4 issues are and where a perception of
5 perhaps doing harm is."

6 My first question is: Who is it that
7 determines where the risk is and where the harm may be?

8 Let me start: What process is there to
9 determine what the risk is and what the harm may be and
10 who makes -- who provides the information and who makes
11 the decision? So perhaps we can start with the
12 process, the information and the decision-making.

13 Could you help me with that or shall I do
14 this again?

15 A. Break the question up, please.

16 Q. All right.

17 "We tend to concentrate on those areas
18 where the potential risk of doing harm is
19 most apparent."

20 I am simply asking: What is the process
21 for identifying potential risks and presumably
22 potential harm in the forest management process, timber
23 management process?

24 A. First of all, I believe that
25 paragraph is a reference back to where we collect

1 information and where we don't.

2 Q. Yes, that's right.

3 A. I see the process or the group that
4 directs what information will be collected and what
5 isn't, first of all, is the planning team which
6 generally has a broad range of professionals on it,
7 foresters, biologists, et cetera.

8 Another avenue whereby the Ministry
9 receives information in terms of what may be impacted
10 upon positively/negatively comes out of the public
11 notices where public groups come to us and say: We
12 have a major concern with this, would you collect more
13 information on that.

14 I guess the ultimate decision in terms of
15 what information is collected is a blending of those
16 two sources of information.

17 Q. Are there any guidelines or lists
18 which direct the proponent to identify -- or how do you
19 set up in advance any system where there may be
20 potential harm or where there may be impacts?

21 A. I am aware of two. One I think is
22 attached to one of the interrogatories, but I don't
23 have the number, where there is a checklist of things
24 that the Ministry will have regard for when it is
25 collecting information. There are outlines, general

1 outlines of things the Ministry will have regard for in
2 the framework for resource management planning, there
3 are in place in district offices something that I would
4 call an IRM checklist.

5 Q. Excuse me?

6 A. Integrated resource management
7 checklist. All of them are versions not unlike the one
8 that you showed me on the Ontario Hydro Class EA and,
9 again, are used in the same sense that the Ontario
10 Hydro one is, a reference list.

11 Q. And those are checklists which MNR
12 personnel work from to determine where there are
13 potential risks of doing harm; is that correct, sir?

14 A. They are a way of zeroing in on it,
15 if you will, starting out with a long list and trying
16 to work down for a particular management unit or a
17 particular project or which portions of the environment
18 may or may not be affected.

19 Q. Do you know, sir, whether native
20 interests are identified on those lists?

21 A. Specifically whether the word native
22 is there I am not sure, sir.

23 Q. Okay.

24 A. It has been by experience going
25 through those exercises or any other types of exercises

1 that it certainly is implied that natives will be
2 involved and we contact them.

3 Q. But it wouldn't surprise you if
4 native interests were not specifically identified on
5 those lists?

6 A. I would like to see one of the lists.

7 Q. What type of harms do people look for
8 or potential harms do people look for? Are there any
9 areas of potential impact on a general level that are
10 of primary concern?

11 A. I don't think I would start
12 prioritizing that list. In a general sense, from perhaps
13 looking at fish and wildlife values, if I look at the
14 priorities we place in something like the fisheries or
15 wildlife policy, the preservation of the resource in
16 the first place I think would be one of the -- the
17 first things one would look at off that list.

18 The effects on economic benefits to
19 residents, locals, the province is another important
20 area. I don't believe any list I have seen basically
21 prioritizes them and says: Look at these things first
22 and these things second, nor does the Ontario Hydro
23 one.

24 Q. Let's go to the last portion of that
25 statement at lines 17 and 18, and it says:

1 "And where a perception of perhaps doing
2 harm is."

3 Is perception reality?

4 A. Yes. What I was referring to there
5 is where there is a public concern, and all I was
6 alluding to is that the nature of those public concerns
7 can change from area to area and they can change over
8 time.

9 Q. So that phrase there, the question of
10 the perception, deals largely with the question of
11 public input?

12 A. That's right.

13 Q. As distinct from your own input?

14 A. That is how I meant it, yes.

15 Q. Perhaps we could go to your witness
16 statement and if we could we will go to page 86 of that
17 statement. Excuse me.

18 The first item I would like to draw your
19 attention to with respect to - I am just having a
20 moment of difficulty finding it - yes, the bottom of
21 page 86:

22 "The Ministry of Natural Resources has
23 participated in native third party
24 licence negotiations with existing
25 licensees, Moose Band."

1 Now, perhaps the first thing we could do
2 is: Could you explain to the Board what a third party
3 agreement is?

4 A. I am not sure I can give you a legal
5 definition. My understanding is it is, if you will, a
6 sub-contract from a primary licensee.

7 Q. So, therefore, the primary licensee
8 has to approve or agree to the terms and conditions of
9 the third party agreement; is that correct?

10 A. That would be my understanding, yes.

11 Q. In this instance did the Moose Band
12 obtain a third party licence?

13 A. No.

14 Q. When were those negotiations, sir?

15 A. They were ongoing about December of
16 last year.

17 Q. Sorry?

18 A. About December of last year, and I
19 think there was a meeting after that.

20 Q. That is when those negotiations --

21 A. When I believe those negotiations
22 were ongoing.

23 Q. Okay. Page 87, you refer to the
24 Islington Band as obtaining a greenhouse operation. Am
25 I correct that that greenhouse was obtained pursuant to

1 the terms and conditions of the Islington Band
2 agreement?

3 A. That's correct.

4 Q. Is that correct? At page 7 -- I will
5 go back to page 86 of your witness statement and to
6 page 7277 of the transcript, September 6th. You
7 indicated:

8 "In the past, the Ministry of Natural
9 Resources has held unalienated Crown
10 timber close to reserves to enable
11 licensing to native people."

12 In your statement, 7277:

13 "The Ministry has held some alienated
14 Crown timber close to reserves to enable
15 licensing to native people."

16 I will just clarify, that is not a
17 policy, it is a practice where there is unalienated
18 timber close to reserve lands?

19 A. That is correct.

20 THE CHAIRMAN: What is meant by
21 unalienated timber in that context?

22 MR. KENRICK: Not licensed.

23 MR. HUNTER: Q. So, therefore, sir, if
24 there are FMAs in existence close to or next to
25 reserves, then native people could not have access to

1 those timbers or that wood without a third party
2 agreement; is that correct?

3 In other words, that area is alienated
4 from them?

5 MR. KENRICK: A. That would be the way I
6 would use the term that is used there. That would
7 be -- would be alienated in that case.

8 Q. Within the area of the undertaking,
9 what would be the percentage of land that is covered by
10 forest management agreements; would you know, sir?

11 A. I couldn't answer that.

12 MR. HUNTER: Mr. Chairman, I may be
13 ignorant on this matter, perhaps that evidence has been
14 led. I have tried to keep up with it...

15 THE CHAIRMAN: We think it might be
16 around 70 per cent, that seems to ring a bell.

17 MR. HUNTER: All right. Well, then it is
18 on my -- I can figure it out.

19 THE CHAIRMAN: I do not know if that is
20 the case.

21 MR. FREIDIN: Figure 10.11, 70 per cent
22 of the licensed area was FMA management units.

23 THE CHAIRMAN: And that did not include
24 the non-land areas; is that correct?

25 MR. FREIDIN: I don't --

1 MRS. KOVEN: Didn't we have a chart, a
2 display at one point, a coloured map that showed that?

3 MR. FREIDIN: Yes. I tell you what, over
4 the noon hour break we will try to pick up the exhibit
5 that deals with that. I think it has been dealt with.

6 MRS. KOVEN: Yes, it has.

7 MR. HUNTER: Q. So, in other words, sir,
8 where there is an FMA in existence, would that apply as
9 well to an FMU, to a Crown -- I am trying to understand
10 the logic.

11 What constitutes an alienation of those
12 lands for the purposes of access by Indians? Does an
13 FMU constitute that, does an FMA constitute that, does
14 a Crown management unit constitute that, does a company
15 management unit constitute that, does a district
16 cutting licence constitute that; that meaning an
17 alienation in which the only available access by the
18 native community would be through a third party
19 agreement?

20 MR. KENRICK: A. My understanding of the
21 use of the term has very little to do with the nature
22 of the unit.

23 Q. Okay.

24 A. Like whether it is Crown or company
25 or -- what it has got to do with is whether it has been

1 licensed to somebody or not. A company unit generally
2 always is or it wouldn't be a company unit; FMAs
3 generally are; crown units may have portions of them
4 licensed or not licensed. Those that are licensed, I
5 would use the term alienated in this context; and those
6 that aren't, I would use unalienated.

7 Q. Where there is a forest management
8 unit, would a third party agreement be required by a
9 Band to obtain access or would that be considered
10 unalienated land and, therefore, an agreement could be
11 made directly between the Crown and the native
12 community for the purposes of use, access to that
13 timber?

14 A. If it were not licensed and, hence,
15 not committed to somebody - interpreting licensing as a
16 commitment - then the discussions could be directly
17 with the Band, is my understanding.

18 MR. MARTEL: Could you tell me what
19 percentage of the land then in the area of the EA is
20 unalienated and, thus, available to the native
21 community?

22 MR. KENRICK: I couldn't put a number on
23 that.

24 MR. HUNTER: Mr. Martel, you
25 anticipated --

1 Q. We have the answer, Mr. Kenrick, that
2 I was simply going to go one step further and say: In
3 areas proximate to the native reserve and then simply
4 lead to Mr. Kenrick and say: Do you have any
5 information as to the number of reserves within the
6 area of the undertaking who have access to unalienated
7 Crown timber?

8 Your phrase is: "Natural resources has
9 held unalienated Crown timber close to reserves." My
10 question is: In your experience, in your knowledge
11 will you indicate to the Board those instances where
12 Indians have had access to unalienated Crown timber?

13 MR. KENRICK: A. As close as I could get
14 to a response to that would be to refer you up a couple
15 of paragraphs to the number of licences that in 1986 in
16 district cutting licences were issued to natives and
17 those would have been, prior to being in those
18 licences, would have been unalienated.

19 If your question -- and there is some
20 numbers there, nine Order-in-Council licences and 27
21 district cutting licences. If --

22 Q. Sorry.

23 A. If your question is how many --
24 adjacent to how many reserves in Ontario is there
25 unalienated wood presently--

1 Q. I was trying to get to that.

2 A. --I couldn't answer that question, I
3 don't know.

4 Q. Can that question be answered, or who
5 could answer it?

6 A. I assume the information -- it would
7 be nice if you defined 'adjacent to' a little more
8 precise, but I think the information just from
9 comparing licence boundaries and allocations to
10 locations of reserves.

11 Q. Well, 'adjacent to' meaning -- I
12 would start with the basic factor that the Crown timber
13 would be available immediately adjacent to, and I am
14 not sure how far back I would go, but if you have a
15 reserve, can we identify those areas where there is
16 unalienated Crown timber in areas immediately adjacent
17 to a reserve.

18 A. My understanding is that could --
19 well, I don't know, but I understand that could get to
20 be a major job when you started taking into
21 consideration: Has it been cut or is it young timber,
22 is it old timber, is it merchantable, what level of
23 detail are you looking for. I can see this job kind of
24 expanding so it would take a great deal of time to
25 collect.

1 If it is a general statement: Where is
2 there unalienated, unlicensed areas as opposed to - now
3 there may be no wood on it, that is a possibility - but
4 adjacent to touching an Indian reserve, if that would
5 give you a general figure, that may be able to be
6 obtained. It is a manual exercise is all I am -- to
7 collect that information.

8 Q. Do you have or has there been
9 evidence presented to the Board on the percentage of
10 licensed land for timbering purposes in the area of the
11 undertaking?

12 As I understand it, as you have said, in
13 all FMAs there may not be -- the whole area may not be
14 subject to a licence, but do we have any information or
15 evidence - as distinct from FMAs - any evidence as to
16 the percentage of the land in the area of the
17 undertaking that is licensed for cutting?

18 A. With all due respect, I think you are
19 pursuing this line of questioning with the wrong
20 person. I can't answer that.

21 Q. Fair enough. Let me just go back.
22 But, in other words, if we were to look at the 27
23 district cutting licences in 86 that were issued -- I
24 will just leave that.

25 If I go to page 7277, you indicate that

1 there are currently discussions between Great Lakes and
2 the Osnaburgh and Saugene Bands. Is it not correct,
3 sir, that the negotiations, at least between Osnaburgh
4 and Great Lakes, are as a result of resource agreements
5 between Osnaburgh and the Province of Ontario, Plaster
6 Dome in relationship to something called the Dona Lake
7 agreement and by virtue of another agreement called the
8 St. Joe agreement?

9 A. There could well be.

10 Q. Thank you. You identify that there
11 are negotiations between McKenzie Forest Products and
12 the Lac Seul Band. Are you aware that there are
13 negotiations as well with Slate Falls?

14 A. No, I wasn't.

15 Q. Is that because Slate Falls is not a
16 reserve?

17 A. No, it has got more to do with the
18 way I determine these illustrations. What I had to do,
19 because I was having difficulty getting a databank that
20 summarizes native involvement in forestry, was to do it
21 by telephone contacts with districts across northern
22 Ontario, and at some point I stopped. What I was
23 trying to find was illustrations.

24 Q. I think, sir, my point is quite
25 obvious. Is it fair to assume that you didn't pick up

1 Slate Falls in your databank because they are not a
2 reserve?

3 A. It could be. I don't know why it
4 didn't come up in the conversation.

5 Q. Okay. One more question. At page --
6 again at page 7277 of your direct evidence, and I
7 believe - if you will bear with me - in your witness
8 statement you identify -- no, I misspoke myself.

9 In your direct evidence you identified
10 that in the past that method has been used for the
11 Michipicoten Band meaning, as I understand it, access
12 to unalienated timber. When did that occur, sir?

13 You say in the past that method... How
14 far in the past?

15 A. I guess it would be mid to late
16 1970s. That was done with Mr. Alton when he was there
17 and that is where that information came from.

18 Q. Would you accept, sir, that subject
19 to check that that was in the mid-60s?

20 A. Could be. That wasn't my
21 understanding.

22 Q. Thank you.

23 MR. FREIDIN: The question was to
24 determine whether in fact that situation occurred in
25 the mid-60s as opposed to mid-70s?

1 MR. HUNTER: That's correct, sir.

2 I have no further questions for Mr.

3 Kenrick.

4 THE CHAIRMAN: Mr. Hunter, it is 25
5 after. Were you proposing to break now or can you
6 start with Mr. Crystal?

7 MR. HUNTER: I was proposing to start
8 with Mr. Crystal.

9 THE CHAIRMAN: All right, go right ahead.

10 MR. HUNTER: Q. Mr. Crystal, I will
11 begin working -- I presume you will be sharing
12 transcripts with Mr. Kenrick?

13 MR. CRYSTAL: A. Yes.

14 Q. Thank you.

15 MR. HUNTER: Mr. Chairman, what I propose
16 to do primarily in the first point of my
17 cross-examination is to deal with the latter half of
18 Mr. Crystal's evidence that deals primarily with policy
19 matters.

20 Q. First, sir, I would ask you to --
21 Volume September 6th, '88 at page 7207, at lines 13
22 where you indicate:

23 "I suppose one of my main
24 responsibilities was providing legal
25 opinions on land claims and natural

1 resources negotiations."

2 Do I understand, sir, that from the
3 period of 1983 when you first joined the branch until
4 1987 that you were not a negotiator during that period
5 of time, that you were providing legal opinions and
6 that you were a negotiator from '87 to '88?

7 MR. CRYSTAL: A. I was not -- I was
8 involved in negotiations. For example, Mr. E. G.
9 Wilson was the negotiator on a number of different
10 matters throughout that period and it was not unusual
11 for me to attend at negotiations with him and provide
12 him with legal advice in those negotiations, but I was
13 not the negotiator.

14 Q. Fine, thank you. So you were as
15 identified at 7208. I am using the phrase special,
16 does that mean principal negotiator from January of '87
17 to February of '88; is that correct, sir?

18 A. Your question is: Does special mean
19 principal?

20 Q. Yes.

21 A. No, I don't think that it does.

22 Q. Okay.

23 A. As I said, Mr. Wilson, and I think in
24 some matters perhaps not related to land and natural
25 resources at any rate, the Ontario Native Affairs

1 Directorate was involved in some negotiations and I was
2 involved in certain other negotiations.

3 I think the special probably refers to
4 the fact that I did not at that time have a clear cut
5 niche in the organizational chart. I reported to the
6 Deputy Minister.

7 Q. Line 14, sir:

8 "Yes, I was responsible for conducting a
9 set of negotiations on behalf of the
10 government related to native people and
11 their land and resource issues."

12 Would you please identify for me what
13 those negotiations were?

14 A. This is during the period of time
15 that I was acting as special negotiator?

16 Q. I believe so, yes.

17 A. Well, okay. There were some land
18 claims. I was involved as a negotiator in respect of
19 the Asabaska land claim.

20 Q. Okay.

21 A. I was the negotiator in respect of
22 negotiating the land claim involving the northern
23 boundary of Indian Reserve Mississagi No. 8.

24 Let's see. I was the negotiator in
25 respect of the land claim involving the land north of

1 Lake Superior, sometimes referred to as the Onishnawbic
2 land claim. I was involved in certain negotiations
3 involving the establishment of Bruce National Park in
4 the north of the Bruce Peninsula.

5 Q. Were those matters involving Cape
6 Croker Reserve?

7 A. They involved --

8 Q. That was the reason for your
9 involvement?

10 A. Yes, yes and the Saugene Indian Band
11 as well. I think there are two Indian bands that were
12 involved in that.

13 Q. I think the only concern I have is
14 with your responsibilities predominantly in the area of
15 land claims?

16 A. No, I am just trying to enumerate the
17 land claims first.

18 Q. All right.

19 A. I can't -- those are the ones that
20 come to mind, but there may have been others.

21 Q. Okay, fine.

22 A. In respect of what we call sectoral
23 negotiations, I was involved in negotiations on fishing
24 with Grand Council Treaty No. 3.

25 I was -- I have been involved in

1 negotiations in respect of fishing with the Six Nations
2 Indian Band. I have been involved in negotiations
3 concerning migratory birds, the hunting of migratory
4 birds with Nishnawbe-Aski Nation. I have been involved
5 in negotiations dealing with wild rice, the right to
6 wild rice in respect of Grand Council Treaty No. 3.

7 In respect of trapping, I think while I
8 was given the responsibility for being the negotiator
9 in respect of trapping during that period of time, I
10 think I have to say that there were no major active
11 negotiations on trapping during that period of time.

12 While I may have been involved in certain
13 correspondence and certain discussions and I was -- I
14 did hold the responsibility of being the negotiator in
15 respect of trapping, I think that that really didn't
16 amount to a great deal of negotiating because I think
17 negotiations were not very active during that period of
18 time. That's all that immediately comes to my mind.

19 Oh, I was the negotiator in respect of
20 the Grassy Narrows Memorandum of Understanding.

21 Q. Mr. Crystal, Mr. Colborne directed
22 some questions at you with respect to whether or not
23 any claims have been settled?

24 A. Yes.

25 Q. As distinct from things that may be

1 settled.

2 A. Yes.

3 Q. I believe, correct me if I am wrong,
4 sir, that your response was that there were -- no
5 claims had been settled; is that correct?

6 A. Well, I think I qualified that by
7 saying, for example, the claim of the Saugene people,
8 that's not what I was referring to before, not Bruce
9 National Park, but the Chippewas of Saugene and the
10 Chippewas of Nawash had a land claim for which the
11 Ontario government provided a position that it did not
12 believe that there was merit to the land claim.

13 Now, from the Ontario government's point
14 of view, that is the end of negotiations. There may or
15 may not be litigation arising out of that situation,
16 but I think that there has been some resolution to the
17 negotiations.

18 Now, that is hardly what lawyers would
19 call a settlement. So in the sense that -- I think the
20 way I tried to set it out for Mr. Colborne is: There
21 have been no settlements where the parties walk away in
22 satisfaction, but there has been even other ones, other
23 than the one I just mentioned, situations where the
24 Government of Ontario, at least to its own
25 satisfaction, sees the matter at an end, at least apart

1 from litigation.

2 Q. Okay. I don't want to put too fine a
3 point on it, just simply I guess -- I don't think
4 anyone is ever going to walk away from these things
5 happy.

6 A. Yes.

7 Q. If that's the test, then we are all
8 doomed.

9 In terms of any of these activities,
10 other than Grassy Narrows. I mean, as I understand it,
11 Grassy Narrows, a piece of paper was signed, a deal was
12 cut and the parties signed an agreement; is that fair
13 enough?

14 A. Well, no. I think the details of
15 that agreement are yet to be resolved. The Grassy
16 Narrows Memorandum of Understanding, I think that was a
17 more or less a framework agreement. We certainly have
18 a number of those. We have one that I am sure you are
19 aware of with Nishnawbe-Aski Nation, an outstanding
20 Memorandum of Understanding.

21 Q. We should be careful, I have not been
22 involved in that at all, sir.

23 A. Oh. Well, I just say that I am sure
24 you are aware of it.

25 Q. I am aware of it.

1 A. And I am sure you are aware of it.
2 The Grassy Narrows I think is a similar sort of
3 agreement to enter into an agreement and we are still
4 working on the details of such an agreement.

5 Q. During this period of time, and I
6 would go --

7 A. If I could just add. It is not a
8 land claim, but in respect of the White Dog Islington
9 Band, there was an agreement that was signed and I
10 suppose that is a settlement of something.

11 Okay, so there is one example. I don't
12 know that I would be able to come up with too many, but
13 I think the White Dog agreement is an example of an
14 agreement relating to natural resources which the
15 Government of Ontario has concluded with an Indian
16 band.

17 Q. Okay. Roughly - and my dates may be
18 wrong here, sir - is it not correct that from roughly
19 1984-85 through to the present day that the Ontario
20 government is engaged in negotiations with tribal
21 councils and/or bands, excluding the MOU, in
22 relationship to other agreements?

23 A. You are referring to the Dona Lake,
24 Golden Pat type agreements?

25 Q. Yes.

1 A. Yes, there have been negotiations.

2 Q. Who was the lead ministry with
3 respect to Dona Lake?

4 A. I wasn't particularly involved in
5 them. It is my understanding that it was the Ministry
6 of Northern Development and Mines.

7 Q. That agreement was concluded; was it
8 not, sir?

9 A. I believe that there were certain
10 subsidiary agreements that flowed from the original
11 agreement and that not all of those subsidiary
12 agreements had been concluded, but that the original
13 one has been.

14 Q. Thank you. Similarly with Golden
15 Patricia; is that correct?

16 A. I believe that the status that I
17 described for Dona Lake is similar to Golden Pat.

18 Q. Is it not correct that those
19 agreements were achieved or arrived at between the
20 federal government, the provincial government, the
21 Indian communities as affected and, in the case of
22 Dona, Plaster Dome and in the case of Golden
23 Patricia/Bond Gold; is that correct, sir?

24 A. I believe that's correct.

25 Q. Is it not correct that agreements

1 have been reached with Ontario Hydro over Cedars
2 Channels with respect to resource management and water
3 management. Are you familiar with that, sir?

4 A. I am not as familiar as you probably
5 are with respect to those matters, but I am -- I am
6 not aware of a formal agreement, and maybe there is
7 one, I am just not aware of it.

8 But I am aware that there have been
9 discussions involving those parties and, to some
10 extent, the matter has been resolved to the
11 satisfaction of the parties, at least for the present
12 time.

13 Q. Well, if you would accept it subject
14 to check, at least as far as my last source of
15 information was that, yes, and that the nature of the
16 agreement was essentially through a series of letters
17 and through amendments to the licence of occupation--

18 A. That's --

19 Q. --which is legislation under MNR's
20 jurisdiction?

21 A. Well, I don't know that I would
22 describe the licence of occupation as legislation, but,
23 yes.

24 Q. Is it not correct that the lead
25 ministry in that negotiation was ONAD, Office of Native

1 Affairs Directorate. Would you accept that, sir?

2 A. I don't disagree with it, but I am
3 just not aware of it. I do know that the Ministry of
4 Natural Resources did play an important role in those
5 discussions.

6 Q. Oh, yes.

7 A. It would have been my impression that
8 ONAD and MNR more or less were partners in that, but I
9 may be wrong about that. That's just my impression. I
10 don't know for a fact who was the lead ministry.

11 Q. Thank you. Are you aware that there
12 are negotiations over Magpie River?

13 A. Yes.

14 Q. This is a proposed dam in the Wawa
15 area?

16 A. Yes.

17 Q. And that these negotiations, the lead
18 ministry again is the Ministry -- is ONAD; would you
19 accept that subject to check?

20 A. That's my understanding, yes.

21 THE CHAIRMAN: Mr. Hunter, where is this
22 all leading?

23 MR. CRYSTAL: I think I know.

24 MR. HUNTER: Thank you, Mr. Crystal.

25 Q. Perhaps you could help me, Mr.

1 Crystal. Why is it that agreements apparently can be
2 reached in other resource areas; that is, with respect
3 to mining, native matters, and I think it is fair to
4 say in other resource areas where MNR is not the lead
5 Ministry, whereas it will appear that where MNR is the
6 lead Ministry things don't move quite as easily as one
7 would hope?

8 Can you help me with that and if my
9 perception is unfair then, obviously, you will say so,
10 but I would like your perception on that?

11 A. Well, your perception is unfair.

12 Q. All right.

13 A. I think --

14 Q. By the way, can I throw into that
15 Hydro and MOE on the class assessments with respect to
16 shoreline and riverbank improvements and Hydro
17 generating facilities?

18 A. If you will.

19 Q. So in fairness you can respond to the
20 whole package, the whole picture.

21 A. Okay. I think that there certainly
22 are a lot of accommodations, they may not be formal
23 agreements of the grandeur of some of the ones that you
24 have described that occur on a fairly regulated basis
25 between MNR and the communities and I think that Mr.

1 Kenrick could probably, if he hasn't already, describe
2 some of the those accommodations that are reached at a
3 local level on a daily basis.

4 I think that the nature of the sorts of
5 agreements that you have described where the lead
6 ministry has been other than MNR is, to some extent,
7 different than the nature of the negotiations that
8 generally MNR has had the lead in in the past. I can
9 tell you, for example, that at the present time the
10 responsibility for dealing with land claims resides
11 with the Ontario Native Affairs Directorate.

12 Q. They haven't resolved any either;
13 have they?

14 A. Well, not at the present time. Now,
15 I think land claims is one kind of negotiation that is
16 particularly difficult to resolve, but I expect that in
17 the next little while we will resolve some.

18 But I don't know that the fact that the
19 responsibility has shifted to ONAD is going to make the
20 problem easier to solve. I think that the problem will
21 be just as difficult with ONAD. I think that land
22 claims are difficult issues to solve and one of the
23 main areas that MNR has been responsible for is land
24 claims.

25 So that's why I think, you know, MNR may

1 not be as successful in resolving some of these matters
2 because the nature of the matters that they have the
3 mandate to deal with and have had the mandate to deal
4 with it is different than those other matters that you
5 have described.

6 I think in the same vein, the issue of
7 Indian fishing is a very difficult issue to try to come
8 to grips with. We have tried and we continue to try
9 and we will succeed, but I think it is -- that kind of
10 negotiation is quite different from the Dona Lake
11 agreement. I think that if MNR had been the lead
12 Ministry in respect of Golden Lake, Dona Lake or Golden
13 Pat that it -- those negotiations would likely have
14 been just as successful as they were, as they did
15 occur.

16 Q. I wish I could give evidence. All
17 right.

18 Okay, that's a fair comment. But you
19 would agree with me, at least at the level of fact,
20 notwithstanding your explanation, that the record shows
21 over the last three to four years that agreements have
22 been reached between native bands, over and above local
23 accommodations, formal agreements, signed deals dealing
24 with access of native people to resources, management
25 of lands, water, air, environmental concerns have been

1 negotiated with other ministries?

2 A. Well, it seems to me that you are
3 asking me to take a very superficial analysis of the
4 issue and say: Well, don't look at the reasons why,
5 just take a look at what has happened, and I don't
6 think there is much merit in doing that, frankly.

7 I think the record is there, as you have
8 set it out. I haven't disagreed with the comments that
9 you've made and I think that my explanation is on the
10 record as well. So I don't know that there is any need
11 to go any further.

12 Q. So you would not agree then with my
13 assertion that it is very difficult, if not impossible,
14 for the native communities to come to an agreement with
15 the province when MNR is the lead ministry?

16 A. I would say that the issues - and I
17 am repeating myself because your question is repeated -
18 that the issues that MNR has the mandate to deal with
19 or has had the mandate to deal with are difficult
20 issues to deal with, and that is why those communities
21 may have difficulty in achieving agreements.

22 I don't think that the reason, the sine
23 qua non of the thing is that MNR has been responsible
24 for the negotiations. I don't buy that.

25 Q. Do you think that the negotiations

1 over the mining agreements were easy?

2 A. Do I think they were easy?

3 Q. Mm-hmm.

4 A. No, I don't think anything comes easy
5 in this business, Mr. Hunter.

6 Q. Just bear with me because I am trying
7 to manage -- I just want to deal very briefly with your
8 role as a special prosecutor and supervisor of
9 litigation.

10 A. Yes.

11 Q. Did you conduct prosecutions
12 yourself, sir?

13 A. Yes, I conducted many prosecutions,
14 prosecutions of native people and prosecutions of
15 people who are not native people.

16 Q. The phrase special prosecutor, was
17 that your title by virtue of the fact that you were
18 involved in native prosecutions?

19 A. Special prosecutor, is that in my --
20 can you direct me to where it says special prosecutor?

21 Q. Sorry, I misspoke, I was referring to
22 special negotiator.

23 A. Yes.

24 Q. I apologize for that. You personally
25 prosecuted cases, predominantly Provincial Offenses

1 Court; is that the...

2 A. Well, of course, many of the
3 prosecutions were pursuant to the Ontario Fishery
4 Regulations and I don't think that those come under the
5 Provincial Offenses Act.

6 I wouldn't say that the majority of the
7 cases that I prosecuted were in Provincial Offenses
8 Court. No, I wouldn't agree with that.

9 Q. You have identified the leniency
10 policy in your statement and I believe it is -- just
11 bear with me.

12 A. Page 176 of my material.

13 Q. Yes, that's right, thank you. Am I
14 correct that that policy was instituted in 1979 --
15 78/79?

16 A. Yes, it is '78 or '79, I am not sure.

17 Q. So that was prior to your involvement
18 obviously with the Ministry?

19 A. Yes, I was just graduating from law
20 school then.

21 Q. Would you happen to know, sir, where
22 the initiative for that policy came from or the
23 background to it? Perhaps if Mr. Freidin would allow
24 me - and this can be subject to check - I believe that
25 it initiated from the Attorney General's office?

1 A. Well, that I am not aware.

2 Q. Okay. You indicated to Mr. Freidin
3 that you prefer negotiations to litigation as a vehicle
4 for resolving conflicts between native people and the
5 province?

6 A. That's correct.

7 Q. Does that reflect, sir, the
8 possibility that prosecutions were used to resolve
9 policy disputes? What is your preference to
10 negotiation over litigation in relationship to?

11 Are you referring strictly to negotiation
12 in civil matters, or are you also including in that
13 negotiations in relationship to quasi-criminal matters?
14 That caused me a bit of concern.

15 A. I am not sure what the context is. I
16 mean, I think that I see negotiations on fishing, on
17 Indian fishing as being related to prosecution.

18 Q. Okay.

19 A. You know, I would hope that when we
20 have a successful Indian fishing agreement, in
21 whichever part of the province it may occur, that our
22 prosecutions in that part of the province would be
23 related to those who don't conduct themselves in terms
24 of the agreement and that those prosecutions would have
25 the equal support from the Government of Ontario and

1 the Indian organization that negotiated the agreement.

2 So in that sense, I see negotiation as
3 being a favoured alternative to litigation, to the
4 litigation that involves prosecutions. Is that what
5 you -- is that responsive to your question?

6 Q. Yes, I was just more interested -- I
7 personally don't have any strong feelings one way or
8 the other, but I was intrigued by the very strong views
9 on your part that negotiations were --

10 A. Yes.

11 Q. I was intrigued that Mr. Freidin
12 asked you the question and that your response was that
13 you clearly preferred negotiations to litigation and I
14 assumed to prosecution.

15 A. Yes. I don't know that it is so much
16 a matter of personal preference. I guess what I am
17 trying to say is that if these issues are to be
18 ultimately resolved -- I don't believe that, for
19 example, prosecution will ever really resolve the
20 matter of Indian fishing rights.

21 For example, I think we can -- and I
22 think in the context that I made that statement was it
23 became very apparent to me as a prosecutor when I went
24 through the motions of conducting prosecutions with the
25 same counsel representing the Indian band, or the

1 Indian person who was involved, and I found myself
2 making the same statements in court and I found my
3 friend making the same statements in court and we would
4 repeat this almost ritualistic exercise over and over
5 again.

6 It made me understand, I think, in a very
7 profound sort of way that prosecution will probably --
8 that we can continue with this dance for some time and
9 it would not resolve the issue.

10 And I think my comment to Mr. Freidin was
11 that my experience as a prosecutor has given me an
12 understanding of the issue that allows me to bring
13 something to my negotiations that I think I wouldn't be
14 able to bring had I not had the experience as a
15 prosecutor.

16 Q. Fair enough.

17 MR. HUNTER: Perhaps, Mr. Chairman, one
18 more question and then we can break, if I might.

19 THE CHAIRMAN: Very well.

20 MR. HUNTER: Q. Mr. Freidin, could you
21 please go to section -- excuse me, page 7996 of the
22 September 15th, 1988 transcript and I would like to go
23 to the exchange between yourself and Mr. Colborne, and
24 particularly at the bottom of page 7995:

25 "Q. Do you think that that..."

1 And I am not getting into the legal
2 dimensions of this, Mr. Kenrick, at this point --
3 sorry, Mr. Crystal.

4 "...that maybe what the authors here are
5 saying, that we just can't say that
6 everything that is proceeded by the
7 adjective Indian or aboriginal can be set
8 to one side because we can say it has
9 been undefined, so we can ignore it for
10 another ten years."

11 He then goes on to say:

12 "Aren't they saying that there are some
13 things like hunting and fishing rights
14 that have been accepted by the courts,
15 they have been looked at ten times over
16 by a hundred branches of government and
17 it is now time to do something about
18 them?"

19 Your statement is next -- and by the way,
20 if I might, I would adopt the sense of frustration that
21 Mr. Colborne has indicated. I would also state to Mr.
22 Crystal that I am glad he has come to his views that
23 these issues aren't going to be resolved through
24 litigation and other ways have to be found, but let's
25 go to your response to Mr. Colborne.

1 MR. CRYSTAL: A. Yes.

2 Q. "...and I think my own personal
3 belief is that it is possible to balance
4 those interests."

5 Let me start right there. What are those
6 interests, sir, "it is your personal belief" in a way
7 that's different, but can I parch the sentence: What
8 are the interests that you are referring to there?

9 I think it is evident, but I would like
10 to simply have it on the record what your personal
11 views are and how you would analyse the problem?

12 A. Well, I believe that Indian people
13 believe that as a matter of right they have a right to
14 fishing, and I think that's the example that we are
15 talking about here.

16 And there are non-native people who turn
17 to provisions such as Section 15 of the Charter of
18 Rights - perhaps without a very profound understanding
19 of that provision and the other provisions in the
20 Constitution - but who turn to that and say, you know,
21 in a very home-spun sort of way: Everybody in this
22 country should be treated equally.

23 I refuse to believe that that gentleman
24 over there, the children of that gentleman over there
25 have or will have different rights in this land than I

1 and my children shall have.

2 I think that there is perhaps an
3 unfounded fear on the part of some non-native people
4 that there may be at some point a regime of exclusivity
5 in respect of Indian fishing which will detract from
6 certain economic interests that they may have and
7 certain recreational interests that they may have, and
8 I think that is the interest that needs to be balanced
9 off with the native interests that I have described.

10 I think it is possible to come to an
11 accommodation where that native fishing right can be
12 codified in such a way that the non-native people who
13 are so concerned and who have so strongly expressed
14 their concerns will not be threatened and will be able
15 to conduct their affairs in a manner that's consistent
16 with their desires. And I think that it is that sort
17 of balancing that needs to be done.

18 Q. Now, let me -- I don't want to lead
19 you, but when you refer to interests I presume there
20 are interests other than fishing interests on the
21 native side of the equation?

22 A. Oh, yes, but I think what we are
23 talking about in the area -- portion of the transcript
24 you directed to me was about fishing.

25 Q. But you are not precluding other

1 interests?

2 A. I think that dynamic of native and
3 non-native people and native people holding the belief,
4 quite properly I think, that they are entitled to some
5 sort of special right, special treatment to be balanced
6 off against non-native people who believe that there
7 should be equality and the special -- that the way that
8 we address those special interests should not detract
9 from the way that they gain their livelihood or the way
10 that they conduct their recreation.

11 I think those are the two things that
12 need to be balanced off, cut across not just fishing,
13 but other native issues, other issues as well involving
14 lands and natural resources.

15 MR. HUNTER: Perhaps, Mr. Chairman, just
16 two more questions on this and then we can break,
17 just to set the stage, otherwise I will have to come
18 back when we deal with the treaty.

19 Q. Presumably those interests or rights,
20 those were the words you used, are in part found in the
21 treaty, Treaty 9; that is, you are referring to
22 fishing, trapping, hunting?

23 MR. CRYSTAL: A. That's part of it.

24 Q. When you said codified, do you mean
25 in something beyond the treaty, those rights or

1 interests would be codified? In your view of the
2 world, is that to be dealt with pursuant to some
3 agreement that would be binding on the parties?

4 A. Yes, some agreement that would -- I
5 don't know that it would necessarily supplant the
6 treaties.

7 Q. Okay.

8 A. But I think that if there is to be an
9 agreement there will have to be some sort of document
10 that says, you know: Here is your end of the bargain
11 and here is your end of the bargain. I think that will
12 have to be done if there is to be resolution to the
13 issue.

14 Q. Other than treaty rights, do you feel
15 that the Class Assessment Document is a reasonable
16 place to try to start to arrange those interests with
17 respect to timber management activities? Would you
18 object to that?

19 A. I am sorry, I am not sure that I
20 understand your question.

21 Q. Well, if we were to seek to assert
22 terms and conditions in the Class Assessment and there
23 is a condition precedent to you that they will have
24 nothing to do with treaty rights, and that it was not
25 an assertion of treaty rights--

1 A. Yes.

2 Q. --but an assertion of a right and an
3 interest to recognize.

4 A. Yes.

5 Q. Or to put into place a regime, to use
6 your word, in which this Class Assessment through
7 amendment would begin to deal with native interests in
8 the forest timber management area, would you object to
9 that?

10 A. Well, I think that, you know,
11 throughout your cross-examination this has been an
12 issue that I have been thinking about. You referred to
13 special interest and then--

14 Q. No, sir, you did.

15 A. No, I think in fairness, I was
16 listening to your cross-examination of Mr. Kenrick, for
17 example, and you used the word special interest of
18 native people several different times.

19 Q. I think in fairness, Mr. Crystal, I
20 did that because I was reading directly from his
21 witness statement. That's what I was putting to him
22 because that is what was in his witness statement.

23 I mean, I am not that concerned about
24 that word, that's not the word I would use to
25 categorize the interests of the native people, and I

1 was trying to accommodate the words that he was using,
2 that's all.

3 A. Well, it seems to me that at the very
4 least what you are putting forward is that native
5 interests ought to be singled out and dealt with
6 separately in this exercise. I think when you put
7 forward the --

8 Q. In part.

9 A. You know whether you call that -- I
10 call that dealing with -- I call that special
11 treatment. You are singling them out, they are dealt
12 with differently than the rest of the populace, I call
13 that special treatment.

14 You don't want to use those words, okay,
15 but I think that something that I suspect you have been
16 trying to put forward is that Indian people ought to be
17 treated specially in this exercise and then you say:
18 But let's not talk about treaty and aboriginal rights
19 and you bring forward the Hydro EA and you say: Well,
20 here is an example of special treatment that doesn't
21 deal with treaty and aboriginal rights.

22 I mean, this document doesn't have
23 anything to do with treaty and aboriginal rights, and I
24 say to you that that document and that special
25 treatment has everything to do with treaty and

1 aboriginal rights.

2 Q. But why?

3 A. Because I believe that if treaty and
4 aboriginal rights were not a part of the political
5 landscape at the present time that the rights, status
6 and capacities of native people would be the same as
7 everyone else and there would be no reason to single
8 them out.

9 But you notice that I use the words
10 rights, status and capacities, I am talking about in a
11 legal sense.

12 Q. Mm-hmm.

13 A. We are talking about treaty and
14 aboriginal rights as being legal entities and I say to
15 you that if those legal entities did not exist, then
16 there would be no reason for attributing different
17 legal rights, status or capacities to native people.

18 Q. But my argument to you, sir, is that
19 independent from those treaty rights there are, in my
20 view, very different environmental resource, human
21 socio-economic conditions which exist in the northern
22 communities and that the nature of timbering activity
23 on those interests are sufficiently different in many
24 instances with respect to the native community by
25 virtue of the fact of where they live than the

1 non-native community?

2 A. Well, Mr. Hunter, I am beginning to
3 feel like I am the one cross-examining you now.

4 Q. That's fine, go ahead.

5 A. But I suggest to you that if that's
6 the case that what we ought to be looking at is special
7 treatment for people in the north in remote
8 communities, not necessarily native people.

9 But it is not my understanding that
10 that's what you are purporting. It seems to me that it
11 is not just that there are what we have called local
12 and traditional users, the special treatment that you
13 have shown in that Hydro document doesn't say: Let's
14 look at the special concerns of people living in remote
15 communities in the north as to their trapping, fishing
16 and hunting, it says native people.

17 Q. Yes.

18 A. And I suggest to you that there is
19 more to that word native than merely living in the
20 north in a remote community.

21 Q. And I suggest to you, Mr. Crystal,
22 that you are reading more into the situation for the
23 purposes of this Class Assessment with respect, sir,
24 than should have been read in. I think that that is a
25 fundamental base and I will go back to it, Mr. Crystal.

1 Perhaps the analysis is simplistic and I
2 will accept that. Why is it that in a whole range of
3 other resource areas agreements have been made and the
4 parties have simply sat down and said: Let's exercise
5 the treaty and aboriginal interests from the agreement
6 and let's deal with the interests that are specific to
7 the native people?

8 A. Yes.

9 Q. I am saying why can't that be done
10 this time?

11 A. I have to be completely candid and
12 frank with you.

13 Q. All right.

14 A. And I have to tell you that, in my
15 view, that those -- were it not for the existence of
16 treaty and aboriginal rights, I do not believe that
17 those agreements would have been concluded in the way
18 that they were.

19 While they were not explicitly mentioned
20 and while I understand that you went to great pains to
21 ensure that those agreements did not mention treaty and
22 aboriginal rights, in the same way as that Hydro
23 document does not mention treaty and aboriginal rights,
24 I do believe that they are the reason for those
25 agreements' existence. There are not non-native people

1 in those areas who have those similar sorts of
2 agreements.

3 Q. Would you not agree with me, sir, the
4 reason for that is because there are very few
5 non-native people in many of those areas?

6 A. That might be a factor but I suggest
7 to you quite, you know...

8 THE CHAIRMAN: Mr. Hunter, I do not want
9 to interrupt at this point, but...

10 MR. HUNTER: One more question, sir, and
11 then I will...

12 MR. CRYSTAL: You know, just to make a
13 point, is that while those agreements may not
14 explicitly refer to treaty and aboriginal rights, they
15 have everything to do with treaty and aboriginal
16 rights.

17 MR. HUNTER: Q. Mr. Crystal, it
18 continues to amaze me that even documents which
19 specifically exclude -- and I understand the logic of
20 what you are saying, that we are trying to find a
21 practical solution to dealing with these issues.

22 A. Yes, yes, yes.

23 Q. And that's my frustration -- is that
24 even where you have a document that specifically
25 excludes treaty and aboriginal rights, this is not

1 sufficient for the Province of Ontario in some
2 instances because by virtue of the sheer mention of
3 those rights, even though you are removing it, it
4 raises this concern. One more question.

5 THE CHAIRMAN: That was not the one
6 question? Okay, one more final question.

7 MR. HUNTER: All right.

8 MR. CRYSTAL: My four-year-old girl
9 always says one more last time.

10 MR. HUNTER: That's what I feel I am
11 being reduced to here.

12 Q. That it is possible to balance those
13 interests in a way that is different from the current
14 regime that we have that will be more satisfactory
15 towards Indian people?

16 MR. CRYSTAL: A. Yes.

17 Q. When you say the current regime, are
18 you meaning our current understanding of the law, our
19 current understanding of the administration of that
20 law, and do you also include in that phrase the current
21 administration of natural resources in this province?

22 A. Okay. Well, I understand that ,
23 those -- that passage that you have chosen on page
24 7996--

25 Q. It is a passage, sir.

1 A. --is about fishing, so my comments
2 about the current regime are about fishing.

3 I think what I am saying is that the
4 current regime essentially is a legislative regime and
5 I am saying to you that I believe that it is possible
6 to change that legislative regime so that the interests
7 of native people would be better satisfied.

8 MR. HUNTER: Fine, thank you. No more
9 questions.

10 Thank you for your indulgence, Mr.
11 Chairman.

12 THE CHAIRMAN: Thank you, we will adjourn
13 until 2:00 p.m.

14 ---Luncheon recess at 12:10 p.m.

15 ---Upon resuming at 2:05 p.m.

16 THE CHAIRMAN: Thank you. Be seated,
17 please.

18 THE CHAIRMAN: Mr. Hunter?

19 MR. HUNTER: Mr. Chairman.

20 Mr. Chairman, what I propose to do is ask
21 Mr. Crystal some questions on the latter part of his
22 evidence, being that information which he provided to
23 the Board on policy matters and then I propose to
24 cross-examine him on certain aspects of his position on
25 treaty rights, just by way of introduction.

1 Mr. Chairman, I hope that our
2 cross-examination will not be extensive there. What I
3 have done is we have prepared a whole series of cases.
4 I would hope not to have to refer to them in any depth
5 or even if at all, and this will really emerge from the
6 nature of the discussion between Mr. Crystal and
7 myself, but I don't want to have to carry that stuff
8 back to Toronto, so maybe as a nice gesture of public
9 education we will distribute them as exhibits anyway
10 even though we will probably not be involved in any
11 substantial cross-examination on the basis of them.

12 THE CHAIRMAN: Are they going to be
13 utilized at some stage at all, other than just being on
14 the record?

15 MR. HUNTER: They are information. Some
16 of them might be at some stage - I don't want to commit
17 to that, sir - I think some cases more than others.

18 You have had reference to St. Catharines
19 Milling, you have had reference to a few other cases.
20 I would simply view them as general background cases.
21 They have been prepared and perhaps some parties may
22 find them of some use and I am sure there are other
23 cases that other people want to add to them.

24 THE CHAIRMAN: Very well.

25 MR. HUNTER: Thank you.

1 Q. Mr. Crystal, I don't think there is
2 much point in you and I relitigating or arguing about
3 the role of treaty rights, but I would like your views
4 to the following question:

5 Are treaty concerns as expressed in the
6 Class EA an impediment or a barrier to establishing
7 terms and conditions in the Class EA that will deal
8 with or could deal with the impacts of timbering
9 activity on native people?

10 MR. CRYSTAL: A. Well, I think it is
11 fair to say that it is important for the Board to have
12 some measure of understanding of treaty and aboriginal
13 rights by way of background in order to properly make
14 its order.

15 But notwithstanding the fact that it is
16 my view that treaty and aboriginal rights are very much
17 related to these matters, and notwithstanding I think
18 the universal view that treaty and aboriginal rights at
19 the present time are somewhat undefined, although not
20 completely undefined and will probably remain that way,
21 I don't think that that fact -- those two facts in and
22 of themselves should necessarily be an impediment to
23 successful negotiations in general or an impediment to
24 the Board making an appropriate order.

25 Q. Thank you, Mr. Crystal. The majority

1 of my cross-examination for the first part, Mr.
2 Crystal, will focus on your report. I would much
3 prefer to work from that than from the
4 cross-examination of your evidence.

5 If there are any areas where you feel
6 that there is an opinion or information which would be
7 better expressed by your part as a result of other
8 information than do so, but for the purposes of trying
9 to move through this evidence I would prefer to go to
10 your document.

11 I have attempted to construct the
12 questions in such a way that, although there is no such
13 thing as a simple yes or no answer, I am just asking
14 you whether you agree or disagree and if you say no,
15 fine and if you say yes, fine.

16 Page 177 of your witness statement, in
17 the second full paragraph you state:

18 "It is important to note that development
19 activities of any sort can have positive
20 and negative potential impacts on native
21 people. "

22 Would you agree with me that the present
23 document, the Timber Management Class EA, does not
24 include a discussion of those impacts, positive or
25 negative, on native people?

1 A. Well, I think that the document in
2 its present form includes some discussions about
3 certain activities, such as trapping or fishing, which
4 are carried on by native people, although it is not
5 singled out. I believe that is correct.

6 Q. Well, I may be wrong, sir, but I
7 believe the only reference to native people in this
8 document is, as I had identified previously, sir, page
9 7--

10 A. Yes.

11 Q. --and with respect to the notice
12 provisions.

13 I had asked Mr. Monzon and Mr. Douglas in
14 previous panels, subject to, check whether there was
15 any other reference to native peoples in these
16 documents and I believe at that time, sir, their answer
17 was none.

18 A. All right. I think that in fairness
19 the answer is that the only direct references to native
20 people are those that are on page 7 and those in
21 respect of the notice that is given.

22 Q. Thank you. Would you agree that it
23 would be of assistance to all concerned that the Class
24 EA Document, a Class EA Document on timber management
25 activities should include a discussion of such impacts?

1 A. Well, I believe that it is important.
2 See, one of the problems that I think we faced in the
3 preparation of this document was, for example, if
4 management of timber on Crown lands had impact on
5 trapping, for example, I think it is important to deal
6 with the impact that it might have on trapping, per se.

7 Now, if a native person is a trapper or a
8 non-native person is a trapper, presumably both
9 individuals are carrying on the activity in the hope of
10 achieving some sort of economic benefit to themselves.

11 I don't know that the impact of
12 management of timber on Crown land has a different
13 impact on trapping by a native person than it does on
14 trapping by a non-native person. So, for that reason,
15 much of the impact I think need not necessarily be
16 singled out for native people.

17 THE CHAIRMAN: Mr. Crystal, is that
18 responsive to the question?

19 I think the question was basically: If
20 you have agreed that the EA Document, Exhibit No. 4,
21 does not contain statements with respect to impacts,
22 potential, negative or positive, I think Mr. Hunter's
23 question to you was: In your view, should it contain
24 such a statement?

25 MR. CRYSTAL: Impacts on native people?

1 THE CHAIRMAN: On native people.

2 MR. CRYSTAL: And I say -- in my answer
3 to that I think maybe I said it in a round-about sort
4 of way, is that if it deals with the impacts on
5 activities which are carried on by native people, then
6 I believe that that is sufficient.

7 MR. HUNTER: Q. If we began with the
8 proposition that it should deal -- let's use your
9 example, trapping.

10 MR. CRYSTAL: A. Yes.

11 Q. If one could show that there were
12 obviously interests in trapping that were common to
13 native and non-native, that that could be dealt with,
14 but where it could be shown from a socio-economic point
15 of view that - I am referring strictly to this example
16 but I think -- I am sure you understand that it can be
17 expanded into others -- that those different types of
18 impacts that may occur on natives ought to be
19 recognized?

20 I guess what I am really saying is: Why
21 can't there be, in the process, some mechanism to
22 ensure, firstly, that attempts are made to obtain that
23 information?

24 A. Well, I think that the comments about
25 notice that are contained in the document do go some

1 way towards achieving that, I think. But when you are
2 talking about impacts, I get back to this idea that I
3 think formed the subject matter of our discussion
4 before the luncheon break and that is:

5 If we are not talking about treaty and
6 aboriginal rights but we are just talking about a
7 particular activity and now you say: Well, there may
8 be some attributes of that activity that are common to
9 both native and non-native people, okay, so they could
10 be dealt with by just dealing with the impacts on
11 trapping, per se, but now you ask: Well, what about
12 those specific impacts which are unique to native
13 people, and--

14 Q. Sorry, go ahead.

15 A. --I wonder if those are not the
16 impacts on people who find themselves dependent upon
17 the activity in a remote area of the province, but not
18 necessarily native, the impacts are not necessarily
19 unique to native people because they are native people.

20 Q. Well, what if the facts were that
21 some substantial number of native communities are
22 isolated and the majority of the people who are living
23 in these areas are native people and just by factors of
24 geography, population, the nature of their individual
25 access to the resources, one could put together a list

1 of factors which are substantially different from those
2 factors which affect non-natives, that is, for example.

3 A. Okay. Well, essentially what you are
4 suggesting to me is the fact that these people are
5 native people is somewhat incidental.

6 Q. Well...

7 A. That there is a set of factors which
8 describes a particular group and anyone else who might
9 fit themselves into that description would be entitled
10 to the special treatment, and the fact that these
11 people are native people is not really very important
12 at all.

13 Q. Well, I don't think there are very
14 many non-native people living on Indian reserves in
15 isolated parts of northern Ontario.

16 A. I think --

17 Q. I think just that sheer fact --

18 A. That may be true, but I think that
19 there may be a number of non-native people who have
20 trap lines who live in remote parts of the province and
21 who have shared the same concerns as those people who
22 are living on Indian reserves. And the mere fact that
23 they are Indian people, as you have described, may very
24 well be incidental and if it is indeed incidental and
25 not to the point, then why is it necessary to single it

1 out?

2 Q. Because of the fact that the majority
3 of the people who are in those areas are native people
4 and that the nature of the relationship between those
5 activities in terms of defining their Indianness is
6 different than the relationship between the non-natives
7 and how they use the land, and I respectfully suggest
8 that that is not just a matter of treaty rights.

9 That is the concern. How does a
10 community define itself? How does it survive? How
11 does it relate to the resources that they are involved
12 with?

13 A. Well, I think that--

14 Q. I don't think it...

15 A. --the environmental assessment, per
16 se, not necessarily just the Environmental Assessment
17 Document but the entire environmental assessment ought
18 to address the concerns or the impacts of timber
19 management on, just as for this example, trapping.

20 Q. Sorry, excuse me, it shouldn't?

21 A. It should.

22 Q. All right.

23 A. Okay. But I am not -- and as I say,
24 this is something that we have had to grapple with. If
25 we want to deal with the impacts on trapping and

1 then -- and we also say we want to deal with the
2 impacts on native trapping, one thing that we have had
3 to grapple with is how does -- how do they -- what is
4 the difference; how is the impact on a non-native
5 trapper, how is the impact of the way that timber is
6 managed on Crown land, how is that impact different for
7 the non-native trapper on a remote trap line somewhere
8 up north than it is for a native person?

9 It seems to me they are both involved in
10 the same economic activity and I know of many
11 non-native people who have lived the so-called
12 traditional lifestyle and that the way that they
13 conduct the business of trapping is - apart from what
14 may be called some sort of spiritual attachment to the
15 land but they may well have that as well, the
16 non-native person may have it as well - but the
17 activity carried on by the non-native may be
18 essentially the same as that carried on by the native.

19 So if you presumably address the impacts
20 of management of timber on Crown land on trapping,
21 presumably you have done the job.

22 Q. Well --

23 A. There may be certain exceptions to
24 that. There may be certain exceptions to that. For
25 example, I think that there may be burial sites for

1 which the impact of management of timber on Crown land
2 has very special importance for native people. That is
3 an example, I think.

4 But when it comes to the sort of straight
5 ahead resource issues like trapping or fishing or so
6 on, or commercial fishing or trapping, it seems to me
7 that if you address how impact is to be mitigated on
8 that activity, per se, you have in the same stroke
9 addressed the impact of that activity on native people
10 in most cases.

11 Q. Well, I don't -- I suppose I have to
12 respectfully disagree with you and the only way I can
13 attempt to deal with that is at a subsequent point in
14 time in terms of addressing those areas where there are
15 differences but, sir, I am trying to get to one simple
16 point.

17 Correct me if I'm wrong, this Class EA
18 Document, I am trying to relate to the evidence that I
19 have before me not, as I have said a thousand times, to
20 something that may come in the future. I am trying to
21 understand the extent and the degree to which this
22 Class EA can pick up, measure and deal with impacts in
23 relationship to, to use your example, remote trapping
24 activity.

25 A. I am sorry?

1 Q. Remote trapping activity.

2 A. And the question is....?

3 Q. Does this Class EA adequately answer
4 that problem?

5 A. I think in and of itself the document
6 doesn't, but I will expect that the entire EA will.

7 Q. So, therefore, if I go back to my
8 original question then, you would agree that it would
9 be of assistance to all concerned - and I will just
10 remove for the sake of this discussion the word
11 native - to include a discussion of those impacts?

12 I am inserting in here, strictly as an
13 example, remote trapping activity in terms of trying to
14 identify how impacts of timbering on that activity can
15 be dealt with.

16 A. Well, I suppose that material which
17 is included in the EA Document and that which is
18 included in the overall EA is a matter of judgment and
19 that is one that our staff has taken upon itself, you
20 know, to decide how it was going to deal with it.

21 Now, you are saying that something which
22 is in the entire -- which comes within the sphere of
23 the entire EA but doesn't come within the document
24 itself, it would have been more appropriate to have in
25 the document. I think that is a matter of judgment.

1 Q. Well, no, let me preface it again,
2 Mr. Crystal. In terms of the evidence which has been
3 presented to date, let's deal firstly with the EA
4 document itself, I am trying to be very specific with
5 respect to the questions.

6 Just simply, are you satisfied with the
7 information that has been provided to date that those
8 issues have been addressed?

9 A. Well, I happen to be aware of the
10 information that is coming, at least some of it. I am
11 satisfied that the EA in its entirety will address the
12 issue. I think that we are at a particular point in
13 time -- I mean, if you ask that question after Panel 1
14 the answer is different than if you ask it after Panel
15 2 as the information unfolds, you know.

16 So at this particular time it may be that
17 impacts haven't be dealt with appropriately. I know
18 that they will be however.

19 THE CHAIRMAN: What is your point, Mr.
20 Hunter? Are you going to be taking the position that
21 if it is not in the document it is not part of the EA
22 process?

23 MR. HUNTER: As I understand it, Mr.
24 Chairman, and correct me if I'm wrong, the Ministry is
25 taking the position that all that which they present to

1 us is part of the EA.

2 I am still having a lot of difficulty
3 understanding the relationship of this document to the
4 evidence that was presented in Panel 6. In other
5 words, when I read this document and I read all of the
6 evidence up to this point in time, I firstly don't see
7 how the issues that I -- I don't believe that the
8 issues that I am addressing in terms of impacts have
9 been met, firstly.

10 Secondly, given the position of the
11 Ministry, their fundamental position on this position
12 as expressed by Mr. Crystal - I am not asking him to
13 agree with me - that it is only treaty interests which
14 drive the "native interests" and I opened my comments
15 by saying that, except for something called special
16 interests, we are not going to deal with those issues.

17 THE CHAIRMAN: Well --

18 MR. HUNTER: So, therefore, I am very
19 suspicious that in the end of the day there will be no
20 difference between that which MNR--

21 THE CHAIRMAN: That may be but isn't that
22 speculation? What I am trying to say is: You will
23 concede that there is more evidence to come, and you
24 will concede that there is probably more evidence to
25 come that is not contained in the EA Document?

1 MR. HUNTER: Yes.

2 THE CHAIRMAN: I think that is a
3 reasonable assumption based on what has happened up to
4 Panel 6.

5 MR. HUNTER: Well, perhaps you could help
6 me, sir. At the end of the day when you prepare your
7 order and we are arguing to you, I am presuming,
8 correct me if I'm wrong, that the fundamental concern
9 that I have is this document here in terms of
10 attempting to persuade you to amend or reject that
11 which is in here.

12 THE CHAIRMAN: Well, the fundamental
13 concern would be the way the document stands as
14 embellished by all of the evidence before us which may,
15 prior to our decision, require an amendment to the
16 document.

17 Let me put it another way. I am trying
18 to be careful. That is, you have a document in front
19 of us which is the Environmental Assessment Document.

20 MR. HUNTER: Yes.

21 THE CHAIRMAN: You then have evidence
22 adduced by all the parties including the proponent.

23 MR. HUNTER: And as I understand it --

24 THE CHAIRMAN: And at the end of the day
25 we will be looking at all of the evidence. And it may

1 be that prior to rendering our decision we will decide
2 on all of the evidence that the EA process is
3 inadequate or is adequate and may require an amendment,
4 notational to the document itself; the amendment being
5 including some of the evidence that the Board has heard
6 and properly feels should be part of the EA.

7 Our option, of course, is: After hearing
8 all of the evidence to determine that both the document
9 and the evidence does not comprise compliance with the
10 Act, it does not meet the test of adequacy or
11 completeness or whatever other language they use,
12 acceptability, under 12(2).

13 I mean, I do not want to get into a major
14 argument because I am sure this will be for the end of
15 the day in terms of argument. All I am saying is you
16 are quite entitled to question on the adequacy of this
17 document, but the Board has held in a series of
18 decisions that we are not going to confine ourselves
19 just to this one document, we are going to look at all
20 of the evidence adduced at the hearing.

21 The Board has offered the rationale in
22 the past that to do so would fix the Board's decision
23 at a point in time which often is several years
24 proceeding the hearing--

25 MR. HUNTER: The hearing. No, I

1 understand that.

2 THE CHAIRMAN: --because this was
3 prepared perhaps several years ago or parts of it and
4 we want the best evidence before us up to the time when
5 we make our decision, and we view the EA as an
6 evolutionary, on-going, continuing process up to the
7 point in time when the hearing is completed.

8 MR. HUNTER: Isn't it correct, sir, that
9 in most instances you have before you all of the
10 evidence?

11 THE CHAIRMAN: You mean in a document?

12 MR. HUNTER: Yes.

13 THE CHAIRMAN: No.

14 MR. HUNTER: So proponents do not
15 normally present their position and all the supporting
16 documents for it?

17 THE CHAIRMAN: They present their
18 position and the supporting documents and, yes, we have
19 all the evidence before us at the end of the hearing.
20 I mean, if what we are talking about is if evidence by
21 the end of the hearing is completely not before us, it
22 has not been presented, that is an entirely different
23 case, okay?

24 MR. CRYSTAL: Mr. Hunter, I wonder if I
25 could amend one of the comments that I made earlier.

1 THE CHAIRMAN: Excuse me, one second, Mr.
2 Crystal. I just want to make sure, you know,
3 everybody understands, I think, the Board's position.

4 We are not going to write our decision
5 based solely on this EA Document because that would
6 obviate, in our view, the need for a hearing at all; we
7 might as well stay at home and read the document and
8 decide it is adequate, it is not adequate, everything
9 is here, that is all we have to hear.

10 The whole idea of this public hearing
11 process, in the Board's view, is to allow the parties
12 to critically examine both the document and all of the
13 evidence adduced by the various parties and that is
14 through the process of cross-examination, et cetera.

15 At the end of the day, we may decide
16 technically that the documentation is amended
17 encompassing everything that we feel should properly be
18 encompassed prior to rendering our decision.
19 Alternatively we could say that no amendment will
20 suffice, the documentation and the evidence adduced at
21 the hearing is inadequate, the EA is unacceptable, the
22 application fails.

23 MR. HUNTER: Could I have one moment,
24 sir?

25 ---Discussion off the record

1 MR. HUNTER: Q. Mr. Crystal --

2 MR. CRYSTAL: A. Mr. Hunter, I was going
3 to make a comment, that is, we were talking a moment
4 ago about impacts that are unique to native people - at
5 least I was talking about it - impacts that are unique
6 to native people and impacts on certain activities
7 which native people are taken and you were asking me
8 about how the EA Document dealt with those impacts.

9 And on page 67 of the EA Document you
10 will note that in lines 24 through to about 34 there is
11 a comment about the impact that access roads would have
12 on Indian rock paintings and sub-surface remains of
13 prehistoric camps and villages.

14 So that I think when I was talking about
15 those sorts of unique impacts, I think that is one
16 place where impact is dealt with. Then it also -- the
17 next paragraph deals with the impact that access roads
18 may have to some extent on remote communities.

19 I also direct you to the material
20 preceding that. For example, at page 63 and onto page
21 64. Page 63 says that road access systems may affect
22 both game and non-game animal species, effects may be
23 direct or indirect, and then it goes on to describe how
24 those impacts may occur.

25 Now, when we are talking about trapping,

1 presumably this is a discussion of the impact of the
2 undertaking on, among other things, trapping. I would
3 suggest to you that that impact is as descriptive in
4 respect of trapping by native people as it is in
5 respect of trapping by non-native people.

6 MR. HUNTER: Mr. Chairman, I think I have
7 to, for the record, go through a series of questions
8 and I am anticipating that the response of Mr. Crystal
9 will be the same in all of the circumstances because
10 they essentially go to the same point.

11 But I think I have to do this to simply
12 get it on the record and to have something that
13 hopefully will live beyond this hearing.

14 Q. On page 176, Mr. Crystal, you say:
15 "Ontario MNR recognizes obligations
16 under Indian treaties and in allocating
17 such resources gives primary
18 consideration to subsistence use by
19 native people."

20 MR. CRYSTAL: A. Yes.

21 Q. Cutting out from that sentence the
22 Indian treaty and focusing strictly on "allocating such
23 resources gives primary consideration to subsistence
24 use by native people", in your view, is that
25 consideration -- has it been adequately met in the

1 documentation which has been presented today and, to
2 the best of your knowledge, will MNR be leading
3 evidence with respect to that issue and the impacts on
4 timber management activities and the ability of native
5 people to maintain subsistence use?

6 A. Again --

7 Q. Yes or no, sir?

8 A. Well, I have been in the chair where
9 I have said "yes or no", sir, myself and I know that
10 that is not always a fair question to ask.

11 Q. Sir, you are saying that MNR gives
12 primary consideration to subsistence use by native
13 people and that is your policy.

14 A. Yes.

15 Q. I am simply asking you whether or not
16 that policy is reflected in the present documentation
17 and will it be addressed and dealt with in subsequent
18 documentation?

19 A. I think it is dealt with in a general
20 way in the documentation which existss and I believe it
21 will be dealt with in a specific way in the material to
22 come.

23 Q. Could you please identify for the
24 Board where, in the Class EA Document, there is a
25 statement that says that subsistence use by native

1 people is an issue to be recognized and dealt with in
2 the class assessment process?

3 A. There is no such statement.

4 Q. Thank you. Mr. Crystal, you have
5 indicated - bear with me - I believe, sir, at your
6 bottom paragraph, the policy of consultation --

7 A. Which page, I am sorry?

8 Q. I believe that I am on page 177.

9 A. Yes.

10 Q. "For this reason..." I draw you to
11 the third paragraph.

12 A. Page 177?

13 Q. That's correct, sir.

14 A. Yes.

15 Q. Third paragraph:

16 "The particular definable concerns of
17 specific communities can be identified
18 and addressed at the local level."

19 A. Yes.

20 Q. "For this reason, the policy of
21 consultation in this undertaking focuses
22 on band councils and native communities
23 potentially affected."

24 Is there any other statement of
25 consultation with communities, native communities, in

1 this document beyond those that were identified in the
2 notice provisions that I discussed with Mr. Kenrick?

3 A. Page 7 and in around page 156.

4 Q. Yes, 156, I believe there are five or
5 six pages.

6 A. Yes, and directly on page 7.

7 Q. Yes.

8 A. To my knowledge, those are the
9 portions of the EA Document that deal with the issue
10 raised in that paragraph.

11 Q. Thank you, sir. Do you believe that
12 those provisions are sufficient?

13 A. Yes.

14 Q. Thank you. On page 177, at the
15 bottom of the paragraph:

16 "As with other resource management
17 planning, planners rely on the assistance
18 and advice of local people including
19 native people in the assembling of
20 information."

21 My question, sir, is: What
22 responsibility -- let me rephrase that. Is there an
23 obligation raised upon native communities to identify
24 substantive areas of impact over and above that
25 information which is obtained by MNR--

1 A. I am not sure --

2 Q. --and that MNR usually collects
3 through its information process? In other words, what
4 obligation falls on the proponent to identify impacts
5 and what obligation falls upon native communities to
6 identify those impacts?

7 A. I think that it really has to be a
8 partnership. I think that there is a responsibility on
9 the proponent to do its best to determine the impacts.
10 That in and of itself without some measure being
11 forthcoming on behalf of the native communities will
12 not work.

13 Native communities have to be forthcoming
14 in presenting to the proponent what the concerns about
15 the impacts are, and I think MNR has to be forthcoming
16 in trying to draw out those concerns. There has to
17 be -- the two have to work together for it to be
18 successful.

19 Q. Okay.

20 MR. MARTEL: Can I ask a question then?
21 This morning I asked you if in fact the licence had
22 already been granted, then how could you deal with the
23 issues after the fact.

24 I ask the same question now: If the
25 licence has been granted and you are moving to the

1 planning stage, are you not then in a position where it
2 is a fait accompli and you have got to make the best
3 choices available to try to meet the needs of the
4 native community?

5 MR. CRYSTAL: Well, first of all, I think
6 that perhaps my colleague might be better able to
7 answer that question, he tried to this morning.

8 But just from my knowledge of the
9 situation, I don't think it is a fait accompli. Before
10 the plan has -- before any plan has been developed --
11 you know, if a plan were developed and then it were,
12 say, served up and said, you know: Here it is, take it
13 or leave it, that would be a fait accompli.

14 But I don't believe that's the way it is
15 done. I believe that there is a draft plan that is
16 prepared and a consultation takes place. It is not a
17 fait accompli at all.

18 When the native communities --

19 MR. MARTEL: You would agree though that
20 the decision to grant the licence is a fait accompli at
21 that stage, to that point?

22 MR. CRYSTAL: Mr. Kenrick, can you speak
23 to that. I am afraid I am not all that familiar with
24 the process there.

25 MR. KENRICK: That's my understanding.

1 What happens in the planning process is the how, whys,
2 whens and wheres of access, harvest, renewal and
3 maintenance and those are not fait accompli, those are
4 the things that are discussed in the process.

5 MR. HUNTER: Mr. Chairman, just one more
6 set of questions on this subject.

7 Q. If you would turn, Mr. Crystal, to
8 page 181 and in that you indicate:

9 "Negotiations for the transfer of Crown
10 (Ontario land) shall be subject to
11 existing commitments."

12 I was not here, sir, at the time of your
13 cross-examination on that subject by Mr. Cassidy which
14 is found at page 7554 in the September 7th Volume.

15 MR. CRYSTAL: A. I believe that it is
16 also addressed in my cross-examination from Mr.
17 Colborne at page 7929 of the September 15th volume.

18 Q. Okay. Well, I prefer to deal with
19 this one. I have read it but I will just focus here.
20 First of all --

21 A. Which one are we dealing with?

22 Q. We are dealing with page 181 of your
23 statement and with Mr. Cassidy's cross-examination.

24 Do I understand your evidence to be that
25 where there are existing commitments that this would

1 preclude future commitments from being made in these
2 areas with respect to timber management planning
3 activity. Am I incorrect in that?

4 A. I think what I said was that what the
5 statement is referring to on page 181 is negotiation
6 for the transfer of Crown Ontario land.

7 Q. Yes.

8 A. I think implicit in that is to native
9 people and settlement of some issue or another shall be
10 subject to existing commitments. That's the context
11 that that statement is made in.

12 Q. Yes and, therefore, if there are
13 existing commitments on those lands, that there could
14 not be a transfer or that the transfer--

15 A. To native people.

16 Q. --would be subject to those existing
17 commitments?

18 A. Okay. Well, this gets to the point
19 that I made under cross-examination by Mr. Cassidy and
20 by Mr. Colborne and that is that if there is an
21 existing commitment we would -- in trying to settle a
22 particular issue with a native person, we would try to
23 settle it in a manner which would not interfere with
24 that existing commitment.

25 Now, if that was impossible, that the

1 only way that the matter could be settled would be to
2 affect that existing commitment, then it would be
3 necessary to consult with the party to whom that
4 existing commitment had been made in order to try to
5 reach some sort of accommodation. I think if that were
6 not done that you could be pretty sure that a lawsuit
7 might very well come out of it.

8 Q. I appreciate that, but I am trying to
9 understand - and this is where I'm departing from Mr.
10 Cassidy's cross-examination - Mr. Colborne's, I think.
11 When you talked about existing commitments--

12 A. Yes.

13 Q. --were you thinking of forest
14 management agreements?

15 A. That's one type.

16 Q. What is the legal nature of an
17 existing commitment which would have to be negotiated?
18 That's really what I am trying to get at.

19 A. I think a forest management agreement
20 is an example of such an agreement.

21 Q. Are there any others, sir?

22 A. Oh, I think licenses for the harvest
23 of wild rice might be another commitment.

24 Q. Others?

25 A. I think that if someone had a trap

1 line we would -- it would be necessary to reach some
2 sort of accommodation with that person. If we were
3 planning on dealing with the land that was the subject
4 of that individual's trap line, it would be necessary
5 to talk to the person about it and see if there wasn't
6 some sort of accommodation that could be reached.

7 Q. So, in other words, that phase
8 purportedly goes two ways. In other words, if there
9 was an existing commitment on that land that was a
10 native interest then an attempt of a subsequent
11 interest to obtain access to that land would be subject
12 to the existing native interest; is that correct? I am
13 using your phrase commitment?

14 A. Well, one would have to look at the
15 nature of the commitment in both ways. You know, as
16 you say, it cuts both ways and I agree. In both
17 instances you would have to look at the nature of the
18 commitment made to the native party and the nature of
19 the commitment that was made to the non-native party.

20 But, you know, if a native person had a
21 trap line and another -- in seeking to try to, say,
22 resolve a land claim is going to that settlement, might
23 very well affect that native person's trap line, I
24 think that the commitment that was made to the native
25 trapper would be on an equal footing with any

1 commitment that would be made to a non-native person.

2 Q. Would the native commitment be on the
3 same footing as the interest by any party who wanted an
4 FMA or some other form of access to timbering areas?

5 In other words, what would be the status
6 of an Indian who had a trapping line in an area that
7 was not presently an FMA and the province were to
8 subsequently want to designate that area as an FMA,
9 would the terms and the conditions of access with
10 respect to that access be subject to the interests of
11 the person who had the trapping line?

12 A. I think if the person that had the
13 trap line were a native or a non-native would not
14 particularly be relevant. I think in both cases we
15 would have to deal with the concerns of that person in
16 one manner or another through consultation, through
17 some sort of accommodation.

18 Q. Thank you.

19 MR. HUNTER: I think, Mr. Chairman, that
20 in coming to the last part of the cross-examination and
21 I think that what might be of some assistance if you
22 were to go 222 of the James Bay Treaty in the materials
23 provided by the Ministry and what I will simply do is
24 while I am commencing the cross-examination...

25 Q. I think, Mr. Crystal, while the

1 material is being handed out, there is just one last
2 point I would raise. In your evidence you have
3 identified some policy concerns, one of them we
4 identify as subsistence. Could those policy
5 considerations be incorporated into the Class EA?

6 MR. CRYSTAL: A. I think they can and
7 have been.

8 Q. Thank you.

9 A. The Class EA not necessarily
10 referring to the document itself but the overall EA.

11 Q. The overall EA?

12 A. Yes.

13 Q. So, in other words, they will be; if
14 they haven't been, then they will be; is that fair?

15 A. Can you ask me your question again?

16 Q. You have identified several areas of
17 policy concerns as expressed by the Ontario government,
18 for example, subsistence, use of land for subsistence
19 activity.

20 A. Yes.

21 Q. You talked about this in relationship
22 to the land base. The Ontario MNR and the Province of
23 Ontario are committed to effective consultation with
24 Indian bands concerning resource development.

25 I can go further, this is not a trick

1 question. The willingness to enter into discussions on
2 the Memorandum of Understanding, and I assure you I
3 don't want to get involved in that discussion.

4 All I am suggesting is four square miles
5 to be used as a guideline as extent of Crown land to be
6 transferred to Canada for Indian reserves within NAN,
7 and I appreciate that there are all kinds of conditions
8 attached to that.

9 A. Yes, yes.

10 Q. My question to you is simply: Should
11 those policy considerations be reflected in the Class
12 EA on Timber Management. I believe you said...?

13 A. Well, I guess what I am saying is my
14 document I believe now is part of the Class EA and I
15 think that it reflects those concerns.

16 Q. Thank you.

17 THE CHAIRMAN: Mr. Hunter, we have
18 received some of the material. We were going to put in
19 the National Indian Brotherhood case as Exhibit 256.
20 Do you want them admitted at this point?

21 MR. HUNTER: Yes, that would be fine.
22 Sorry, there is a series of cases. We will put them
23 all in as one exhibit.

24 THE CHAIRMAN: Oh, as one exhibit. Oh,
25 okay.

1 MR. HUNTER: Yes, sorry, I misunderstood,
2 Mr. Chairman.

3 MR. FREIDIN: Mr. Chairman, I don't know
4 whether somebody reading the transcript might want to
5 know what these cases were and maybe it is worth
6 putting on the record just the citation of the cases.

7 THE CHAIRMAN: I think it may be
8 difficult, just logistically, because the cases are
9 fairly voluminous in length. It might be better to
10 give them each a separate number.

11 MR. HUNTER: Give them each a separate
12 number.

13 THE CHAIRMAN: Yes.

14 MR. HUNTER: If you wish, sir. Whatever
15 is your wish.

16 THE CHAIRMAN: At least one number with
17 A, B, C, D, and E or something like that.

18 MR. HUNTER: Whatever is most convenient.

19 THE CHAIRMAN: All right. I think we
20 will go with separate numbers. So the National Indian
21 Brotherhood case would be exhibit...

22 MR. CRYSTAL: Is that the Guerin case
23 taht you are referring to?

24 THE CHAIRMAN: No, this is the Becker.

25 MR. CRYSTAL: I think the National Indian

1 Brotherhood is the intervenor in that action, Mr.
2 Chairman.

3 THE CHAIRMAN: Oh, I am sorry. Guerin,
4 right. Okay.

5 That's the Guerin case. The Agawa case
6 would be Exhibit 257. The Sparrow case would be
7 Exhibit 258. The Weesk case - is that how it is
8 referred to - would be Exhibit 259 and the Eninew case
9 would be Exhibit 260.

10 MR. CRYSTAL: Which one is that? Oh,
11 Eninew.

12 THE CHAIRMAN: And lastly the one I have
13 got is the Batisse case would be Exhibit 261.

14 ---EXHIBIT NO. 256: Citation from Guerin case.

15 ---EXHIBIT NO. 257: Citation from Agawa case.

16 ---EXHIBIT NO. 258: Citation from Sparrow case.

17 ---EXHIBIT NO. 259: Citation from Weesk case.

18 ---EXHIBIT NO. 260: Citation from Eninew case.

19 ---EXHIBIT NO. 261: Citation from Batisse case.

20 MR. HUNTER: Q. Mr. Crystal, perhaps I
21 can go back again because I gather you responded to my
22 question about the relationship between the policy
23 matters that are in your evidence and the relationship
24 of such to the EA, and I believe you said they are part
25 of the EA process; is that correct?

1 MR. CRYSTAL: A. The EA itself.

2 Q. The EA evidence.

3 A. The environmental assessment.

4 Q. Does that mean that you would not
5 object to an amendment to the EA Document which took
6 into consideration those policy considerations, and
7 that ought to have been the thrust of my question,

8 In other words, you have entered these
9 policy concerns, and I will concede I am not
10 comfortable at all with how one moves from what it is
11 you have said, which are policy considerations by the
12 province, and how those documents or how those policy
13 considerations are brought to the Board with a view to
14 seeking amendments to the EA Document which would take
15 into consideration policy considerations from what I
16 raise.

17 Do you have any objection to that that
18 you could...

19 A. You know, it is not been part of my
20 responsibility to prepare the EA Document, that has
21 been somebody else's responsibility. Now, there is a
22 body of information which is known as the environmental
23 assessment, a component of it is this EA Document.

24 Q. Yes.

25 A. I am not sure that it is what the

1 relevance of having a particular issue raised in the
2 document or having it raised in the overall EA. So it
3 seems to me that this was a matter of judgment that was
4 exercised to determine that certain materials should be
5 included in the EA and other material shall be in the
6 EA Document and other material shall be evidence at the
7 hearing and be given equal weight I would think as
8 being totally part of the environmental assessment.

9 I think it would probably be more
10 appropriate to ask my counsel that question.

11 Q. Well...

12 A. Because I can only tell you my
13 evidence, but I can't tell you where the best place...

14 Q. Well that is your own personal
15 opinion, that's all.

16 A. But I don't really have an opinion on
17 whether it is more appropriate for it to be in this
18 book or for it to be in the evidence. I can provide
19 you with my evidence, but I don't think that I am
20 competent to tell you where the best place in the
21 process is to insert that evidence.

22 THE CHAIRMAN: I think the important
23 thing, Mr. Hunter, is that it gets before us.

24 MR. CRYSTAL: Exactly.

25 THE CHAIRMAN: In some form, meaning

1 either in the documentation or through oral testimony
2 or other documentation adduced at the hearing.

3 MR. HUNTER: Mr. Chairman, I undertake to
4 really try to get a better handle. I am still having a
5 lot of difficulties conceptually between the EA
6 Document, the evidence, and what it is that we can
7 address in final argument in terms of...

8 THE CHAIRMAN: So did the Board.

9 MR. HUNTER: That's my problem.

10 THE CHAIRMAN: So did the Board leading
11 up to where we were today in a series of cases because
12 somehow the process has to be rationalized. And the
13 Board should not be expected to render a decision on a
14 document alone fixed at some point in time which is
15 generally months or years preceding the actual hearing.

16 And in order to rationalize that process
17 we, in effect, have indicated in a series of decisions
18 of the Board that we view the overall EA process as
19 comprising both the documents originally filed, as well
20 as other documentation and oral testimony brought
21 before the Board up to and including the time of
22 decision.

23 MR. HUNTER: I will review those
24 decisions and I will hopefully have the opportunity to
25 discuss them with Mr. Castrilli and Mr. Campbell in

1 more comfortable...

2 THE CHAIRMAN: Take a look at the Red
3 Hill Creek decision.

4 MR. HUNTER: I have.

5 THE CHAIRMAN: The descending side of
6 that decision.

7 MR. HUNTER: I have.

8 Q. All right. Well, Mr. Crystal, I
9 thought that the last part of our cross-examination
10 would be easily done and I had fond hopes that -- I
11 have really tried to break these questions down again
12 into yes and no propositions and--

13 A. Okay. I should inform you that in
14 some cases I may answer them yes or no, and in some
15 cases I may find it necessary to explain my answer
16 further.

17 Q. Fair enough.

18 THE CHAIRMAN: Mr. Hunter, just before
19 you go on, could we mark the last three cases?

20 MR. HUNTER: I'm sorry. I apologize.

21 THE CHAIRMAN: The Cheechoo case.

22 MR. CRYSTAL: Cheechoo, yes.

23 THE CHAIRMAN: Will be Exhibit 262 and --
24 this one is hard to read. Is it the Simon case?

25 MR. CRYSTAL: Yes.

1 THE CHAIRMAN: The Simon case will be
2 Exhibit 263 and, lastly, the St. Catharines Milling and
3 Lumber Company case will be Exhibit 264.

4 Thank you.

5 MR. FREIDIN: Was that marked earlier
6 during...

7 MR. CRYSTAL: I don't believe it has
8 been.

9 THE CHAIRMAN: I do not believe we marked
10 it. It was referred to, but it was not marked.

11 MR. CASTRILLI: Excuse me, Mr. Chairman,
12 the last exhibit should be marked as Exhibit 264?

13 THE CHAIRMAN: Oh, I am sorry, yes, that
14 is correct, it should be 264. That is the St.
15 Catharine Milling and Lumber case.

16 ---EXHIBIT NO. 262: Citation from the Cheechoo case.

17 ---EXHIBIT NO. 263: Citation from the Simon case.

18 ---EXHIBIT NO. 264: Citation from the St. Catharines
19 Milling and Lumber Company case.

20 MR. HUNTER: Q. Mr. Crystal, the first
21 question is: Are there differences between treaty and
22 aboriginal rights and, if there are so, then what is
23 your understanding of the conventional or perceived
24 view as between aboriginal and treaty rights?

25 MR. CRYSTAL: A. Treaty rights, I

1 understand to mean rights that derive from the treaty
2 itself. Aboriginal rights are those rights which are
3 not -- which are claimed by Indian people to be their
4 rights owing to their aboriginality but which are not
5 derived from a treaty document.

6 Q. With respect to my client
7 Nishnawbe-Aski Nation, is it correct that we are
8 dealing with treaty rights?

9 A. I would think that we are dealing
10 with treaty rights. It would also, although it is very
11 undefined, I would also expect that the Nishnawbe-Aski
12 Nation were also enjoy aboriginal rights that may very
13 well be beyond the scope of the treaty.

14 Q. Are the Nishnawbe lands within the
15 area of the Royal Proclamation of 1763?

16 A. It is my understanding that they are
17 not in the area that is the subject -- it is not in the
18 area, their territories were set out in the Royal
19 Proclamation. It is my understanding that they were
20 not -- that the area -- that the Nishnawbe-Aski Nation
21 territory is referred to in the Royal Proclamation
22 although it is not one of the -- it is not included in
23 the territories that are set out there.

24 Q. Perhaps I will rephrase it. you are
25 correct, NAN is not obviously mentioned in, but are

1 the majority of the communities within the area of the
2 Royal Proclamation?

3 A. Okay. If your question is: Is it my
4 view that the Royal Proclamation has application to the
5 area that is the NAN area, my answer is yes.

6 Q. Thank you. Perhaps I will go to a
7 very basic question, Mr. Crystal, and I just simply
8 want your views and your opinion.

9 Is the Province of Ontario a party to
10 Treaty 9?

11 A. Well, I have heard differing views on
12 that issue. Certainly the Province of Ontario was
13 involved in the Treaty 9 process in that there was a
14 representative from the Province of Ontario in the
15 treaty-making party. I think it is one of the cases
16 that you gave that you suggested that we would be
17 dealing with here today, and I think it was the Batisse
18 case.

19 Q. Batisse, yes.

20 A. Where it suggests that the Province
21 of Ontario had some sort of observer status in the
22 treaty-making process but that it was not really a
23 party to the process.

24 Q. Do you share that view?

25 A. Well, I think that there are certain

1 problems that exist, for example, in Treaty No. 3
2 because the Province of Ontario was not in any way
3 connected in that process, the treaty-making process in
4 Treaty No. 3.

5 For example, the Province of Ontario may
6 have some problems with the location and extent of
7 certain reserves in Treaty No. 3 and I think that it is
8 fair for the Province of Ontario, at least from a legal
9 point of view, to argue that once the surrender was
10 given, the land that was subject to the surrender
11 became Crown Ontario land pursuant to the Privy Council
12 cases and that because it was not a party to the
13 treaty-making process that it was then open for Ontario
14 to object to some of the promises for reserve land that
15 were made by Canada in respect of Crown Ontario land.

16 I don't think that sort of argument would
17 be open to Ontario in respect of Treaty No. 9 because
18 Ontario was there.

19 Q. Could we at least -- I am just simply
20 asking your view, but we have a District Court decision
21 that says the province was not a party and obviously
22 that is something that can be open for debate, but I
23 think -- would you agree with me that, firstly, in
24 Ontario this is the only treaty in which the province
25 is a signatory?

1 A. I think that's correct.

2 Q. Correct. And perhaps subject to
3 check - and I am sure you know this - I believe that
4 there is only one other treaty in which the province
5 may have been a signatory and that was Treaty 8 in the
6 northern part of British Columbia?

7 A. I am not aware of that. It may very
8 well be the case.

9 Q. So just once again, is there a
10 possibility that the Province of Ontario was a party to
11 Treaty No. 9?

12 A. Well, I think that it is -- it turns
13 on your definition of party, I suppose. I mean
14 Ontario's participation is what it was and think that
15 we can look at the historical record and see precisely
16 what Ontario's participation was and it is no more and
17 no less than just precisely that.

18 And I think that to say, you know, yes
19 Ontario was a party or no Ontario wasn't a party is
20 not necessarily very helpful. I think what would be
21 helpful -- what is helpful is to look at the extent of
22 Ontario's participation, which I think we have already
23 described to some extent, and just leave it at that.

24 Q. Isn't it correct that the treaty was
25 essentially between His Majesty and the Indians and

1 that it is at page 240 the phrase is:

2 "...and His Majesty the King."

3 In other words, the federal government and the province
4 established a commission of which the federal
5 government and the provincial government were parties
6 or were members, they went out and negotiated the
7 treaty on behalf of His Majesty of the day.

8 A. Yes.

9 Q. So if you even want to make it more
10 confusing you can say that the treaty was not even
11 between the federal and provincial government and
12 native people, but it was between his Majesty --
13 negotiated on His Majesty's behalf by the federal
14 government and the province.

15 A. Sorry, could you give me that again.

16 Q. I am simply adding a gloss on to it.
17 I am simply suggesting that even to make the situation
18 more confusing, the treaty is effectively between his
19 Majesty --

20 A. Yes.

21 Q. --and the Indians as negotiated by
22 federal representatives and the provincial
23 representative. Would you -- well, I will just leave
24 it there because I think...

25 A. Well, I think that is accurate. I

1 think the other factor though that you have to keep in
2 mind is that under the Constitution, which I guess was
3 about 40 years old at this stage of the game, or 30
4 years old -- no, 40, it is the federal government that
5 is given legislative responsibility and legislative
6 responsibility for Indians and land reserved for the
7 Indians.

8 And so I think taking that legislative or
9 constitutional responsibility into account you have to
10 recognize the differences between the participation of
11 the federal government and participation of the
12 provincial government. When we speak of His Majesty,
13 of course we could speak of His Majesty in right of
14 Canada or His Majesty in right of the province.

15 So to speak of His Majesty is not really
16 very helpful.

17 Q. So in fact that it is still open to
18 discussion that the Crown is divisible, that his
19 Majesty could refer to His Majesty in right of the
20 province or be interpreted as such and His Majesty in
21 right of the Dominion.

22 A. I think that particularly in respect
23 of Treaty No. 9 there is a stronger argument for saying
24 that His Majesty was representing both arms of his,
25 you know, domain.

1 Q. And if that were the case then there
2 is some argument that the federal and provincial
3 governments were parties in that sense?

4 A. Well, we get back to this word party
5 and I think I have said that I don't know that that is
6 helpful.

7 Q. Are the lands that we are referring
8 to, that is the tract of land surrendered pursuant to
9 the treaty, lands as understood as reserved for Indians
10 within the meaning of 91(24) and all I am suggesting is
11 that that is what St. Catharines Milling said, but you
12 can obviously check that.

13 A. I think the lands that were the --
14 given that those lands were reserved to the Indians by
15 the Royal Proclamation and had not been subject to
16 surrender, I think very strong argument could be made
17 that those were what sometimes are referred to as
18 91(24) lands.

19 Q. Thank you.

20 A. I have also heard it suggested though
21 that Royal Proclamation lands may not be 91(24) lands.
22 I am of the personal view that they are.

23 Q. Thank you. And, therefore, the
24 interest pursuant to the Proclamation that the Indians
25 obtained was a personal and use of fractory right as

1 established in St. Catharines Milling; is that correct?

2 Would you agree with that?

3 A. Yes I think that is an appropriate
4 interpretation, yes.

5 Q. Okay. And would you agree that the
6 right which is obtained is a personal right in the
7 sense that it is only alienable or can only be
8 surrendered to the Crown and I believe the reference
9 there is Star Chrome case.

10 A. And various other cases, and most
11 recently the Guerin case. I think Mr. Justice Dickson
12 makes a comment about the nature of aboriginal title
13 and I think that he makes that point as well.

14 Q. Well, you exactly anticipated where I
15 am going. Would you agree with me that pursuant to the
16 Guerin case, that when Indians surrender their personal
17 use of fractory rights in lands reserved under the Act
18 the Crown became either -- and I am leaving this open.

19 A. Under the Act, which Act are you
20 referring to?

21 Q. The Indian Act.

22 A. Okay.

23 Q. The Crown became either a fiduciary,
24 referring to Mr. Justice Dickson, or a trustee
25 according to Justice Wilson?

1 A. Well, I take it where we are going to
2 is whether or not that fiduciary obligation is one
3 which attached merely to the federal government or one
4 which attaches to the federal government and...

5 Q. Certainly raising it as a question of
6 speculation, Mr. Crystal, yes.

7 A. Well, I think that the Guerin case...

8 Q. Well, perhaps for the purposes of the
9 Board...

10 A. Okay.

11 Q. Let me just to lead to the logic of
12 that. You have a surrender under Proclamation pursuant
13 to treaty, you have a surrender pursuant to the Indian
14 Act and is there any differences in principle between
15 the nature of those surrenders, you can give obviously
16 your opinion, and if the Province of Ontario is in fact
17 a partner to the treaty, then does that fiduciary
18 interest lie with the province as it has been held to
19 lie with the federal government?

20 I think there is your opening to give
21 your views on it.

22 A. Okay. Well, if I can just find a
23 particular passage in the Guerin case.

24 THE CHAIRMAN: What, Mr. Hunter is, the
25 exact relevance of taking either position with respect

1 to what we are charged with?

2 MR. HUNTER: If I can -- well, I think a
3 part of it, sir, is to simply provide you with
4 background information as to the fact that there are
5 differences of opinion with respect to the nature of
6 Treaty 9 which results largely from the fact, as I had
7 indicated, that it is the only treaty, other than I say
8 for portions of Treaty 8, in which a province was a
9 signatory.

10 MR. CRYSTAL: Mr. Hunter --

11 MR. HUNTER: Q. And what remains --
12 sorry. And what remains very open, and I think you are
13 hearing as far as you can in discussion, is what the
14 significance of that is.

15 And I think that although it is not
16 exceptionally material, I hope it is of some interest
17 that the nature of my client's concerns in this matter
18 flows as much from the fact that it is a treaty as it
19 is from a fact that it is the province who "signed the
20 treaty" and, therefore, does that raise a very
21 different legal obligation on the part of the province
22 in relationship to that treaty -- with respect to that
23 treaty?

24 MR. CRYSTAL: A. Okay. If I can give
25 you my view and you may or may not agree with my view,

1 in fact you probably won't agree with it, but I think
2 at page 376 of the Guerin case there is discussion of
3 the fiduciary relationship between the Crown and the
4 Indians and at letter (c) just the second full
5 paragraph on page 37 of that case, it states that:

6 "The fiduciary relationship between the
7 Crown and the Indians has its root in the
8 concept of aboriginal native or Indian
9 title."

10 And then it says:

11 "The fact that Indian bands have a
12 certain interest in lands does not
13 however in itself give rise to a
14 fiduciary relationship between the
15 Indians and the Crown. The
16 conclusion..."

17 And this is the key point:

18 "The conclusion that the Crown is a
19 fiduciary depends upon the further
20 proposition that the Indian interest in
21 the land is inalienable except upon
22 surrender to the Crown."

23 Now, it is my understanding that as a
24 matter of constitutional law the arm of the Crown to
25 whom or to which land may be surrendered is the federal

1 government and so I then draw the conclusion that if
2 indeed the fiduciary relationship depends upon the
3 proposition that Indian interest in the land is
4 inalienable except upon surrender to the Crown that
5 that Crown is the federal Crown, then presumably that
6 fiduciary relationship which is owed is owed by the
7 federal government.

8 Q. Mr. Crystal has gone directly to the
9 heart and I think it is a question obviously at some
10 point in time some court is going to have to deal with.
11 The issue here, sir, and the material concern I think
12 is quite obvious.

13 There was a surrender, there was a
14 surrender to the Crown and, in this instance, the
15 argument is by virtue of the province having been a
16 signatory: What was the nature of the surrender, what
17 was the nature of the benefit, and given St. Catharines
18 Milling, the fact that there was, upon a surrender of
19 Crown land the property reverts to the province, can
20 the province or should the province be held with
21 respect to Treaty 9 to be in the same position as the
22 federal government? And that really is the extent and
23 the degree and the point of trying to raise that issue.

24 The other concern - and I really only
25 have four or five more questions - you indicated to Mr.

1 Colborne, correct me if I'm wrong, sir, that an
2 aboriginal right may be, and I think your words were,
3 may be an interest within the meaning of Section 109
4 of the Constitution Act.

5 A. Yes, I think I said that...

6 Q. Do you recall that, sir?

7 A. I think I said that aboriginal rights
8 are not clearly defined and because they are not
9 clearly defined it is difficult to say very much about
10 them, but to the extent that they may be clearly
11 defined in the future, those clearly defined rights may
12 be an interest other than the province as set out in
13 Section 109.

14 Q. Thank you. Would you agree with me
15 that that same logic that you have applied applies to
16 treaty rights as well as an interest?

17 A. Given that treaty rights -- see
18 Section 109 is all about interest in land.

19 Q. Yes. I don't think the treaty --
20 okay.

21 A. And a treaty right -- well, certainly
22 a treaty right to a reserve would be an interest other
23 than the province.

24 Q. What does Treaty 9 convey as a right;
25 hunt, trap and fish.

1 A. Yes.

2 Q. Yes.

3 A. But I think it also has promises
4 about reserves; does it not?

5 Q. That's correct, yes. But do you have
6 difficulty, sir, with the proposition that the right
7 conveyed by the treaty to hunt, trap and fish--

8 A. Is an interest.

9 Q. --is a profit a prendre, a right to
10 take from the lands?

11 A. Well, I think I went through this
12 with Mr. Colborne. If you look at the third complete
13 paragraph on page 240, and that is the paragraph that
14 talks about hunting, fishing and trapping, and it says
15 that they shall have -- the Indians shall have the
16 right to pursue their usual vocations of hunting,
17 trapping and fishing throughout the tract surrendered.

18 I am sorry if I am going too fast.

19 "That the Indians shall have the right to
20 pursue their usual vocations of hunting,
21 trapping and fishing throughout the tract
22 surrendered as heretofore described."

23 And then it says:

24 "Subject to such regulations as may from
25 time to time be made by the government of

1 the country acting under the authority of
2 His Majesty."

3 And then it says these peculiar words:

4 "And saving and excepting such tracts as
5 may be required or taken up from time to
6 time for settlement, mining, lumbering,
7 trading or other purposes."

8 So this right to hunt, fish and trap is a
9 right which floats over a particular piece of land.
10 But I think I said to Mr. Colborne that right may be
11 somewhat efemoral in that that right which exists at a
12 particular point in time, given that the land gets
13 taken up, may cease to exist at a future point in time.

14 When one talks about rights, one usually
15 talks -- one usually is talking about something that is
16 somewhat less efemoral than that. Now, that is not to
17 say that they are not rights, but my concern is that
18 Section 109 talks about an interest in land and it
19 seems that the very nature of this right is that it can
20 be disappear at a particular location in a piece of
21 land. So that is how I would qualify...

22 Q. Well, let me try to clarify this.

23 That to the extent and degree that the
24 right to pursue their usual vocations of hunting,
25 trapping and fishing exists - I am not accepting your

1 definition that it can be just cut off - but assuming
2 that there has been an existing right--

3 A. Okay, assuming that it exists --

4 Q. --is it a profit a prendre, that is
5 all?

6 A. Well, I am not sure that I...

7 Q. It's a right to take.

8 A. I am not sure that I would want to
9 characterize it as a profit a prendre because knowing
10 from my vague recollections of what a profit a prendre
11 is from law school, it seems to me that there might be
12 certain incidence of that estate in land if it is one-
13 and I am not sure if a profit a prendre is an estate -
14 but if it is one, I am not sure that it matches exactly
15 with the rights that Indian people in Treaty No. 9 have
16 as a result of this provision.

17 But whatever it is, given that at a
18 particular moment in time it exists at a particular
19 location, for that moment in time at that particular
20 location I believe that it is an interest other than
21 the province.

22 Q. Thank you. The a profit a prendre,
23 just for all of our edification, is a right -- I love
24 this one - is a right of common, a right exercised over
25 another's real property and accompanied with

1 participation in the profits of the soil thereof.

2 THE CHAIRMAN: Well, the late Chief
3 Justice wrote a whole book on that stuff and I am not
4 sure any of us here ever understood it, in fact then or
5 shall ever understand it and, unfortunately, he is not
6 with us to explain it.

7 MR. HUNTER: Q. Mr. Crystal, would you
8 share with me or agree with me the interesting question
9 that at some stage is going to have to be determined.
10 Firstly, if we look at the treaty and it talks about
11 the government of the country.

12 A. Yes.

13 Q. What do you think--

14 A. That means?

15 Q. --that moons?

16 A. I think that means the Government of
17 Canada.

18 Q. Of the Dominion?

19 A. Is Canada a Dominion today?

20 Q. Yes. Given that view then, sir, and
21 my reading of the treaty, is it not fair to suggest
22 that it is only the government of the Dominion that may
23 take up such tracts as are required?

24 A. No. I think that -- no, there is a
25 little bit of history on that. I think Treaty No. 3

1 stated precisely that, that it was the Dominion that
2 was to be the taker upper and subsequently that was
3 amended through an agreement that it was Ontario that
4 was to be the taker upper, and I think that Treaty No.
5 9 -- the words of Treaty No. 9 are different in that
6 respect from the words of Treaty No. 3.

7 And I think that that difference was
8 quite deliberate. Obviously if you look at the
9 intervening agreement between Treaty No. 3 and Treaty
10 No. 9, the words in Treaty No. 3 that made it apparent
11 that it is was the federal government that was to be
12 the one that could take up the lands, that notion was
13 removed and does not reappear in Treaty No. 9.

14 So I think that it was the intention that
15 the province would be the party that has the power to
16 take lands up in Treaty No. 9.

17 Q. Oh, so I misunderstood you.
18 Therefore, you feel that the government of the country
19 is the province, not the Dominion

20 A. Oh no. I think that -- you see, I
21 would separate -- see what I think the words government
22 of the country refer to--

23 Q. Yes.

24 A. --are the regulations. I don't
25 think, for example, that the province can pass

1 regulations which could restrict hunting, trapping and
2 fishing. Okay, that is what I think the government of
3 the country:

4 "...such regulations as may from time to
5 time be made by the government of the
6 country."

7 Then it says:

8 "And saving and excepting such tracts as
9 may be required or taken up from time to
10 time for settlement, mining, lumbering,
11 trading or other purposes."

12 It doesn't really say who it is that
13 shall do that. In fact it leaves it wide -- it doesn't
14 say by the provincial government or by the federal
15 government, but if you look at Treaty No. 3 and I think
16 this is in here somewhere, Treaty No. 3, starting at
17 page 191, yes, okay.

18 If you look at the similar provision, it
19 is on page 193 and one, two, three, fourth complete
20 paragraph is the analogous paragraph, it talks about
21 hunting, fishing, it doesn't say trapping, that is
22 another interesting difference between Treaty 3 and
23 Treaty 9.

24 Q. Well, if we are going to do that,
25 sir, I would also point out Treaty 3 talks about their

1 avocations of hunting and fishing whereas...

2 A. Yes. Okay.

3 Q. All right.

4 A. That's true, that's true, but the
5 difference that I am really calling to your attention
6 is that it says:

7 "Saving and excepting such tracts as may
8 from time to time or be required..."

9 This is towards the end of the paragraph:

10 "...or taken up for settlement, mining,
11 lumbering or other purposes by her said
12 government or the Dominion of Canada or
13 by any of the subjects thereof duly
14 authorized therefore by the said
15 government."

16 Q. Yes.

17 A. So, you asked me the question and I
18 have referred to it as who shall be the taker upper,
19 and I say that in Treaty 3, just on the face of the
20 treaty itself, it is clear that the federal government
21 shall be the taker upper and Treaty No. 9 is nothing --
22 doesn't say anything about that at all.

23 And intervening between the two in 1894
24 there is an Act that says something like, you know, we
25 said in Treaty 3 that the federal government would be

1 the taker upper but we were wrong about our view of the
2 world back when we signed Treaty No. 3, so really it
3 should be the province that should be the taker upper.

4 Now, I think that that needs to be
5 understood when you look at Treaty No. 9 and you ask
6 the question which level of government is the one to
7 take up the lands for settlement, mining or lumbering.

8 I think that on that basis you have to
9 come to the conclusion that at least the attention of
10 the drafters of this document was that it would be the
11 provincial government.

12 Q. So therefore sir, the logic of your
13 argument is that the province can unilaterally take up
14 lands from time to time; is that correct?

15 A. Well, according to the jurisprudence
16 they are Crown Ontario lands.

17 MR. HUNTER: Thank you. Thank you, Mr.
18 Crystal.

19 THE CHAIRMAN: Thank you, Mr. Hunter.

20 Mr. Edwards, are you going to be
21 cross-examining this panel at all?

22 MR. EDWARDS: No, thank you, Mr.
23 Chairman.

24 THE CHAIRMAN: Very well. Perhaps, Mr.
25 Campbell, we will take a short afternoon break and then

1 we can at least start your cross-examination.

2 The Board would like to probably sit
3 until about 5:30 today. You will be going beyond that,
4 will you not, or will you?

5 MR. CAMPBELL: Well, Mr. Colborne's
6 occasion this evening has given me a large incentive to
7 try and finish by that time and I will make every
8 attempt to do so.

9 THE CHAIRMAN: Well, if we are to make
10 any sense of your argument in the morning, it would be
11 probably be wise if you did.

12 MR. FREIDIN: Mr. Campbell, I would
13 appreciate it if you would not make it necessary for me
14 to spend all evening doing re-examination.

15 THE CHAIRMAN: All right. We will return
16 in fifteen minutes.

17 Thank you.

18 ---Recess taken at 3:40 p.m.

19 ---Upon resuming at 4:00 p.m.

20 THE CHAIRMAN: Thank you, ladies and
21 gentlemen. Be seated, please.

22 Mr. Campbell, if you want a fair
23 adjudication at tonight's proceedings do not be longer
24 than 5:30.

25 MR. CAMPBELL: I am convinced that the

1 adjudication of the proceedings will be on the merits
2 and that Mr. Sutterfield and I will emerge victorious,
3 but that perhaps can be dealt with later.

4 In any event, Mr. Chairman, in the
5 developing tradition of opening statements at the
6 beginning of cross-examination, I have two matters I
7 want to deal with, both of which are irrelevant to the
8 cross-examination.

9 The first matter is that I really have
10 been remiss in not taking an earlier opportunity to
11 advise everybody here that Ms. Seaborn gave birth to a
12 daughter who is today celebrating her first month
13 birthday and both Ms. Seaborn and Claire are doing
14 extremely well and everyone will be encouraged by the
15 fact that I am looking forward to her early return to
16 the hearing.

17 The second matter --

18 THE CHAIRMAN: Least of not are you.

19 MR. CAMPBELL: I am much too modest to
20 say that, Mr. Chairman.

21 The second matter, that I just thought I
22 might sort of plant a small seed with the Board. It is
23 clear I think that this hearing is going to extend over
24 next summer and at least my circumstances are such that
25 trying to schedule summer holidays, given the diverse

1 activities of my family, requires a Craig computer in
2 order to fit all the permutations and combinations in.

3 If the Board was thinking of looking to
4 next summer and setting what its hearing schedule in
5 terms of when summer holidays, or a break might be
6 achieved in that summer, it would certainly be helpful
7 to myself and I am sure to many others who have to plan
8 for family vacations, if that could be done some time
9 before the end of the year so that those plans could be
10 put in place. And I just raise it now because it is a
11 convenient opportunity.

12 THE CHAIRMAN: Very well.

13 CROSS-EXAMINATION BY MR. CAMPBELL:

14 Q. Now, Mr. Kenrick, I think my first
15 series of questions are for you. We have submitted
16 nine interrogatories in connection with this panel.
17 Were you responsible for the preparation of the answers
18 to those interrogatories?

19 MR. KENRICK: A. Yes, I was.

20 Q. Now, are there any changes or
21 corrections which you wish to make to the answers
22 provided to the Ministry of the Environment
23 interrogatories?

24 A. Not that I am aware of.

25 Q. So you have no changes or corrections

1 which you wish to make?

2 A. I don't believe so, no.

3 Q. And you adopt the answers that are
4 put forward in those interrogatories?

5 A. Yes.

6 MR. CAMPBELL: Mr. Chairman, those
7 interrogatory answers, in all cases but one, referred
8 us to detailed information that would be provided in
9 Panel 7. In the one other case it referred us to Panel
10 9.

11 They also, in themselves, contained a
12 certain amount of the information, but it was clear
13 that the matters raised are going to be dealt with in
14 more detail in later panels.

15 I am, therefore, electing at this stage
16 not to file those interrogatory answers at this time,
17 but if it becomes necessary to do so during the
18 appearance of one of those later panels to supplement
19 answers or evidence at that time, it will be my
20 submission that, based on the answers given by Mr.
21 Kenrick, I am now entitled to file them at that future
22 point.

23 THE CHAIRMAN: You do not have any
24 objections, do you, Mr. Freidin?

25 MR. FREIDIN: I have no objection to

1 that.

2 THE CHAIRMAN: Very well.

3 MR. CAMPBELL: Q. Mr. Kenrick, the first
4 matter I want to raise with you has to do with a line
5 of questions from Mr. Cassidy. It culminated at
6 approximately page -- it culminated at page 7551 of the
7 transcript and it related to attendance at parks.

8 Do you recall that series of questions?

9 MR. KENRICK: A. Yes, I do.

10 Q. And in asking you those series of
11 questions, Mr. Cassidy referred to Exhibit 9 and, in
12 particular, he referred to the park attendance
13 statistics on pages 46 and 47 of Exhibit 29; is that
14 correct?

15 A. That's correct.

16 Q. Now, do you have those statistics in
17 front of you?

18 A. 46 and 47, yes.

19 Q. He referred you, in particular on
20 page 47, to the increased number of parks which is
21 shown on one of the middle columns on page 47. Do you
22 recall that?

23 A. Yes.

24 Q. And then he also referred you to the
25 total visitors figures which are in the right-hand

1 column at the top of page 46. And I would like to --
2 if I can find the transcript, I would like to just read
3 you the question and answer starting at page 7550, line
4 12 extending to 7551, line 6, and then I have some
5 questions about those answers which you gave.

6 Mr. Cassidy asked you:

7 "Q. But is it fair to say, Mr. Kenrick,
8 by looking at these figures that except
9 for a growth from 84/85 the total number
10 of visitors, notwithstanding increases in
11 the number of parks and the total size of
12 the parks that we saw on page 47 has in
13 fact declined from 1983 to '86?

14 A. The figures here would support
15 that. I guess where I would be a little
16 caution is that is an awful short period
17 of time to detect trends. That could be
18 in response to a rainy summer, for
19 instance, could well have been in
20 response to things like the recessionary
21 period in the early 1980s.

22 Q. So there are a number of factors
23 which might influence a decline?

24 A. That's correct.

25 Q. But, nevertheless, in the period in

1 which 80 new parks had been created from
2 '83 to '86, there is in fact a
3 corresponding decline in numbers
4 attending parks; is that correct?

5 A. Yes."

6 Now, in connection with that testimony,
7 am I correct that the increased number of parks were
8 developed as a result of two exemption orders granted
9 to the Ministry of Natural Resources, or perhaps that's
10 a little unfair, they were developed by MNR and
11 facilitated by two exemption orders, numbered MNR 43
12 and MNR 44 that allowed those parks to be formed; is
13 that correct?

14 A. I believe so.

15 THE CHAIRMAN: That's exemption orders
16 from the EA Act?

17 MR. CAMPBELL: Yes.

18 Q. And am I correct that the advice that
19 the Minister of the Environment at that time was given
20 by the Ministry of Natural Resources was that with
21 respect to those additional parks, had the exemption
22 not been granted, that the public would be damaged by
23 the loss of anticipated outdoor recreational
24 opportunities and tourism benefits; is that correct?

25 MR. KENRICK: A. I believe that was one

1 of the rationales in the exemption order, yes.

2 Q. And would you agree that in fact the
3 formation of the parks, to the extent that they have
4 now been formed, has in fact provided additional
5 outdoor recreational opportunities and tourism
6 benefits?

7 A. Yes.

8 Q. Would you also agree with me that
9 with respect to the figures on page 46 for
10 attendance -- but with the exception of a small number
11 of park extensions of existing parks, the attendance
12 figures on page 46 relate only to existing parks as of
13 1982 because there was no program in place by MNR which
14 counted visitors in the new parks?

15 And I think that is demonstrated on the
16 following pages of Exhibit 29, page 48, 49 and so on,
17 where there are simply no entries against campers in
18 relation to those new parks; that is, there is a strong
19 correlation, if it is not exactly the same, that all of
20 the new parks have no entry with respect to developed
21 camp sites, campers or camper nights spent in those
22 parks?

23 A. That's generally correct. In most of
24 the new parks that are shown on those lists - I am most
25 familiar with the northern region ones - there is no

1 mechanism for counting people; that's hence they are
2 blank.

3 Q. So would it be fair to conclude then
4 that one of the reasons that attendance has not gone up
5 is because the use of the parks that already existed in
6 1982, and the only parks in which figures were
7 collected through 1986, is it not fair to conclude that
8 the use of those parks has been at a practical maximum?

9 A. Correct.

10 Q. And would you agree with me that
11 that's best illustrated, for example, if one looks at
12 on page 47 the number of camping units available during
13 the various years -- if you look at the top of page 47
14 of Exhibit 29, the number of camping units that are
15 available has in fact slightly declined according to
16 these statistics over the period 1982 to 1986?

17 A. That would be an indicator. I just
18 draw your attention, there is a subtle difference
19 between camping units and total visitors.

20 Q. I understand that, that's why I say--

21 A. One indicator.

22 Q. --one example and that one can -- if
23 you are looking at 20,300 and some odd camp sites, the
24 fact that there were 20,000 in 1982 and 20,000 in 1986,
25 at least with respect to camper nights, is simply an

1 indication that they are being as well used -- those
2 camp sites are being as well used in 1986 as they are
3 in 1982?

4 A. I am not sure I would draw the
5 conclusion that far, not knowing what the occupancy
6 rates were in 1982 compared to 1986.

7 Q. Well, isn't that information shown on
8 page 46 where the average camping days, for instance,
9 on those camp sites '84, '85, '86 has been 2.6, or the
10 average camper nights has in fact held fairly steady
11 over that whole period, allowing for the kind of
12 vagaries you talked about to Mr. Cassidy, things like
13 weather and so on?

14 A. Generally, that's correct.

15 Q. All right. Now, would you agree with
16 me then that in terms of making any general conclusion
17 about the growth or decline in the use of the parks,
18 including the new parks, given that statistics are only
19 collected in the old parks, that on the statistical
20 information we have available that no such general
21 conclusions can be drawn as was suggested by Mr.
22 Cassidy?

23 A. I would agree with that.

24 Q. Thank you. Now, Mr. Crystal, I want
25 to turn next to you for a moment. You have appeared as

1 counsel for MNR, have you not, in at least one hearing
2 relating to environmental assessment matters?

3 MR. CRYSTAL: A. I have.

4 Q. And you are generally familiar with
5 the requirement under the Environmental Assessment Act
6 to consider alternative methods and alternatives to the
7 undertaking?

8 A. I have to admit that when I was
9 involved in that particular environmental assessment I
10 had those matters well sorted out in my head. I have
11 not really turned my mind to that issue, but I am
12 familiar with the issue to some extent. I hadn't
13 reviewed that issue in preparation for this hearing.

14 Q. All right. I am not going to try and
15 ask you to give any opinion on the difference between
16 alternative methods and alternative to, but you are
17 aware that the proponent is required to consider both
18 alternative methods and alternatives to the
19 undertaking?

20 A. I am not sure that I am really
21 qualified to answer this question at this point in time
22 because, as I say, I have not really reviewed the Act
23 in that context in preparation for this hearing.

24 Q. All right. Well, without -- I will
25 just ask you to accept then, for the purposes of my

1 questions, that there is an obligation on a proponent
2 to consider alternative methods and alternatives to?

3 A. Okay.

4 Q. And my question for you is whether
5 you have prepared any analysis as to how alternative
6 methods of carrying out the undertaking might more or
7 less easily accommodate Ontario government policy with
8 respect to the native matters?

9 A. Can you ask me the question one more
10 time?

11 Q. Yes. Have you prepared any analysis
12 as to how alternative methods of carrying out the
13 undertaking might more or less easily accommodate
14 Ontario government policy with respect to native
15 matters?

16 A. No, I think I can say that I have
17 not.

18 Q. Has anyone else, to your knowledge,
19 carried out such an analysis?

20 A. No one has spoken to me about it.

21 Q. Can I conclude from that, that to the
22 best of your knowledge, no one else has carried out
23 such an analysis?

24 A. I can tell you that I am not aware of
25 such an analysis being carried out by someone else.

1 Q. Well, is that different from my
2 question. I am never quite sure when my question gets
3 restated. Can I say that, to the best of your
4 knowledge, no one has carried out such an analysis?

5 A. I have no knowledge of somebody else
6 carrying out that analysis.

7 Q. All right. My second question to you
8 is: Have you prepared any analysis as to how
9 alternatives to the undertaking might more or less
10 easily accommodate Ontario government policy which
11 respect to native matters?

12 A. I have not.

13 Q. Has anyone else, to your knowledge,
14 carried out any such analysis?

15 A. I have no knowledge of such analysis
16 having been carried out.

17 Q. All right. Now, Mr. Kenrick, coming
18 back to you. These questions arise really out of
19 questions that were put and answers that were provided
20 by Mr. Cassidy first and by Mr. Hunter.

21 I guess the first question is simply one
22 of whether a forest management agreement, an FMA, can
23 result in terms or conditions or obligations being
24 incorporated into that agreement which may in any way
25 limit the Crown's ability to achieve the planning goals

1 of the timber management planning process?

2 A. I would say no, the recent ones. I
3 think there has been some evolutions over time and they
4 have become better agreements.

5 Q. And is it your judgment as well
6 that -- or what is your judgment with respect to the
7 question as to whether alternative methods of carrying
8 out this undertaking or alternatives to this
9 undertaking are restricted in any way by the forest
10 management agreements?

11 A. I am not sure I understand your
12 question.

13 Q. Well...

14 A. The alternative methods and the
15 alternatives too that are listed in the EA Document?

16 Q. Well, or any others that you can
17 think of. The Board is not limited in its examination
18 to the ones that are set out in the Environmental
19 Assessment Document.

20 So I guess my question is simply: Do you
21 see any restriction arising from forest management
22 agreements with respect to any consideration in the
23 course of the timber management planning process of
24 alternative methods of carrying out the undertaking or
25 alternatives to the undertaking?

1 A. I am not sure I am the right person
2 to answer that. If any of those alternatives to or
3 alternative methods were contrary to some things that
4 were now, I guess I would view them as contractual
5 obligations in an FMA, then I think there would be some
6 problems, but I would want to look through an FMA point
7 by point.

8 Q. All right. Well, let's try and take
9 an example of whether such problems could arise. Am I
10 correct in my understanding that forest management
11 agreements do provide for the taking of specified
12 quantities of wood from the units covered by those
13 individual agreements?

14 A. I am not sure whether it is the FMA
15 that specifies the quantity or whether it is the
16 management planning exercise that follows it that
17 specifies the quantity. There is an area, certainly.

18 Q. All right. Let's just -- if I have
19 to deal with it as a hypothetical, then perhaps I will
20 and we can clarify that later on.

21 But take as a hypothetical the assumption
22 that a forest management agreement specifies a quantity
23 of wood or even an area that is available for timber
24 extraction purposes. Can you accept that as a starting
25 point?

1 A. Okay.

2 Q. Now, if that forest management
3 agreement is then signed and then a timber management
4 planning process commenced, is there not the
5 possibility that the timber management planning process
6 with its identification of areas of concern could
7 conclude, for instance to take my client's particular
8 interest, that the areas of environmental concern were
9 such that the quantity or area available for timber
10 extraction simply could not be provided on that unit?

11 Would that not, to put it mildly, raise a
12 significant problem for the timber management planning
13 process?

14 A. I believe there is a provision - and,
15 again, I don't have an agreement in front of me - but I
16 believe there is a provision in the FMA for, first of
17 all, initially an exclusion process where pieces of
18 area can be taken out of the licence and, subsequently,
19 provisions in the process to deal with areas of
20 concern, some of which may have modified operations on
21 them, some of which may become reserves.

22 In your hypothetical case, my experience
23 in dealing with most units where we have dealt with
24 areas of concerns and reserves and the rest of it, you
25 have been dealing with a volume of land that hasn't

1 made the licence unworkable in its final -- it hasn't
2 been of a magnitude that the unit was no longer viable.

3 Q. Well, I understand that, but that is
4 at least a possibility, is it not, the hypothetical
5 that I put to you?

6 A. Hypothetically, yes; realistically, I
7 am not so sure.

8 Q. Now, how do you arrive at the
9 conclusion that realistically that is not a problem
10 that you have to be concerned about? Isn't it
11 necessary to go through that detailed process of
12 identifying areas of concern before you can make that
13 statement?

14 A. That's true. If I can just draw on
15 an illustration and, again, for one of the early FMAs
16 where the limitations on the Crown to withdraw or
17 create reserves was more stringent than the current
18 wording is in revisions to them.

19 I can recall one in an area I worked in
20 where -- a park area, a fairly large one, in my opinion
21 it would have been bigger than the sum total of most
22 AOCs and most management units, arose after the signing
23 of the FMA.

24 And, in that case, we had a discussion
25 with the company and they basically waived the section

1 and said it was reasonable, that should have been
2 established as a park, go ahead. Given reasonable
3 people working with that, I personally don't think it
4 is a problem.

5 That is the best illustration I know of
6 something that came up after the fact that couldn't be
7 anticipated during the FMA process.

8 Q. All right. Well, if you take the
9 position that it should not be a practical problem,
10 could I conclude then that it would not be a practical
11 problem to include some kind of term and condition
12 which made it clear that priority was to be given to
13 the results of the timber management planning process?

14 I take it that what you are saying is
15 that, in effect, that kind of a term and condition you
16 don't expect would ever kick in. So can I conclude
17 from that that it would never be a problem, that it
18 would not be a problem to contemplate that kind of a
19 term and condition?

20 A. To my understanding, that type of a
21 concern is already addressed in that the Crown Timber
22 Act specifies the plan has to be done according to a
23 process and I understand that process, in the manual,
24 says that it has to be done according to EA conditions.
25 The process they are talking about is one which

1 includes the area of concern process.

2 Q. Yes, but I am trying to relate that
3 then back to the FMA. And I take it what you told me
4 is that, as a practical matter, the concern that there
5 might be environmental and other areas of concern which
6 bit into the amount that a unit holder thought would
7 otherwise be available to them for timber extraction
8 purposes, that that just isn't a practical
9 consideration?

10 Do I understand your evidence correctly?

11 A. I know in the most recent of the FMAs
12 there was a section in there that talked about
13 withdrawals. Again, you are getting dangerously close
14 to an area I haven't been dealing with extensively
15 recently and at one point, in some generations of FMAs,
16 there was a limitation on that.

17 In the most recent wording, as it has
18 evolved - and I don't have the wording in front of me -
19 I believe there is a provision in there that the type
20 of situation you are anticipating is dealt with.

21 Q. All right. Well, let me put a
22 specific example to you. Other proponents in dealing
23 with this kind of thing have taken the position that
24 they insert into any agreements that they enter into,
25 prior to approval, a condition that the execution of

1 that agreement; that is, the completion and
2 implementation of that agreement or its continuation,
3 is subject to the environmental assessment approval.

4 Is that the kind of wording that you are
5 saying is in those agreements, such that the FMA would
6 be subject to the results of the timber management
7 planning process?

8 A. I am not sure those words -- I don't
9 think I am the right person. Those words I don't
10 believe are in existing FMAs.

11 Q. All right.

12 MR. CAMPBELL: And, Mr. Freidin, at some
13 point you could advise me who the right person is to
14 speak to this?

15 MR. FREIDIN: Yes.

16 MR. CAMPBELL: Q. Now, Mr. Kenrick,
17 continuing with you, I take it you are the person who
18 is responsible for the collection of the data for the
19 Moosonee plan, and I am not quite sure what kind of
20 plan I am referring to, whether it was District Land
21 Use Guidelines or what it was?

22 MR. KENRICK: A. Background document,
23 the first phase towards creating a plan, the data
24 portion.

25 Q. All right. And you were responsible

1 for the collection of that data?

2 A. In different ways. I did some of the
3 writing and while I was in Timmins I did some of the
4 editing and I happened to have been in Moosonee when it
5 was released.

6 Q. Could you indicate what techniques
7 were used for the collection of that background data,
8 and I was struck -- to give you a little direction as
9 opposed to just an open ended question, I was struck by
10 your comment to Mr. Hunter this morning that you went
11 into the -- MNR went out to the communities and asked
12 for information.

13 Does that fairly characterize one method
14 of data collection?

15 A. Yes. A good amount of the data that
16 is in the -- if you look through the tables, you will
17 see tables addressing native use of a particular
18 resource and non-native use of a particular resource.

19 In many cases, the non-native use of a
20 particular resource was documented through records in
21 goose camps or whatever, it was things that we had in
22 our possession. The portion of the database that was
23 weak when we started this was records on native food
24 fishery, a subsistence fishery, the magnitude of the
25 native goose harvests, spring and fall, so we didn't

1 have good numbers on quantity and we also didn't have
2 good numbers on location, where those activities took
3 place.

4 So what we did was hire individuals from
5 their home communities, supplied them with well thought
6 out questionnaires. We called them, I believe, How
7 Much and Where Questionnaires. We dealt with the how
8 much of the resource you are using in one year and
9 then, in the opposite -- in the next year we dealt with
10 where are you using the resources.

11 And those people went into the
12 communities and I believe it was fairly close to a
13 hundred per cent sample of the communities in terms of
14 going door-to-door and asking them how much resource
15 they used and where they used it.

16 The results of that are what appears in
17 the tables under native use in the maps. Now, the one
18 exception to that is Fort Severn and just by way of a
19 little background, Fort Severn is not in the same
20 council area as the balance of the communities are on
21 the Hudson Bay coast.

22 The Cayanna Council had been involved
23 with the West Pat study prior and they had collected
24 some information as part of another exercise, and there
25 was some resistance on their part to want to repeat the

1 exercise.

2 So, as best we could, we tried to mesh
3 the exercise from the Cayanna group with the
4 exercise -- the information we collected from Winisk
5 Kawanik south.

6 Q. Why did you adopt the procedure of
7 going out to the communities, in effect, retaining an
8 individual to gather that information from those
9 communities for you, the how and where information --
10 how much and where, excuse me?

11 A. Why is your question?

12 Q. Yes, why.

13 A. I guess it was our belief that --
14 again, this is first step of a process and I think
15 understanding -- having some trust in the information
16 and having some ownership for it would probably pay
17 off, if you will, later on in the process as opposed to
18 us hauling magic numbers out of government documents.

19 Q. In effect you saw it as -- in some
20 cases, was it simply the only way to get?

21 A. That's correct.

22 Q. So it was the only way to get
23 information?

24 A. Some of it, yes.

25 Q. And others of it, it was -- can I

1 take it that it was a conscious decision to involve
2 those communities in a more direct way in that process
3 so that they would be a little more committed to the
4 results?

5 A. And involve them early, yes.

6 Q. And would you agree with me that as a
7 general proposition, when seeking information from
8 various interested groups with respect to any
9 particular activity, you need to give some thought to
10 the design of that request rather than simply assuming
11 that one approach is suitable for everyone?

12 In effect, that is what you did in
13 Moosonee; you gave some specific thought to how best to
14 get that information that resided in that community,
15 you designed something especially for that and you went
16 out and got it; is that correct?

17 A. That's correct.

18 Q. And you would agree with me that in
19 any information gathering exercise some thought needs
20 to be given to just that kind of question, how to best
21 get information from any particular group that you are
22 approaching?

23 A. Correct.

24 Q. And would you agree as well that it's
25 unlikely that one approach can be applied blanket

1 fashion to all groups from whom you are seeking
2 information?

3 A. That's correct.

4 Q. Now, I take it you would also agree
5 that for distant communities an invitation to
6 participate at a central location could involve
7 significant travel distances and, in some cases, for
8 instance land-locked communities, it could involve
9 significant expenses in order to participate on each of
10 several occasions, for example, during a timber
11 management planning process.

12 A. Correct, and if I can beg part of
13 your next question, that is the very reason why there
14 is a long history of the Ministry travelling into some
15 of those particularly more remote northern communities
16 for those kinds of meetings and presentations.

17 Q. Well, you have just read my next
18 question, so I guess I will just...

19 Mr. Crystal, I want to come to a remark
20 that you made at about a quarter to three this
21 afternoon as well in this regard. I take it that with
22 respect to information gathering and developing some
23 trust in a process, that you would agree that MNR, to
24 use your words, has to be forthcoming in drawing out
25 those interests?

1 MR. CRYSTAL: A. I think that is
2 correct, yes.

3 Q. Now, with respect to the timber
4 management planning process itself, Mr. Kenrick, can I
5 take it that MNR then proposes to go out to the more
6 remote communities in the course of that timber
7 management planning process, both in order to obtain
8 the necessary information for timber management
9 planning purposes and to allow opportunities for
10 reviewing draft timber management plans or major
11 amendments and so on?

12 MR. KENRICK: A. I believe the document
13 right now makes a commitment that -- I think it talks
14 about speaking verbally as a way of dealing with the
15 notice requirements. It makes a commitment and I am
16 not aware of any place we have ever refused to go on
17 request into a remote northern community to discuss any
18 program.

19 Q. Well, that may well be. I think the
20 thrust of my question though is one more of whether MNR
21 ought to be committed, in your view, to a proactive
22 program both at the information gathering stage and
23 the -- and I ask you that because that is your sort of
24 particular area of expertise, but I would apply it as
25 well to draft plan or final plan review - whether MNR

1 is committed in a proactive way to either go out to
2 those communities to elicit information or discuss the
3 plans or, alternatively -- well, let's just start
4 there.

5 A. To elicit information, yes.

6 Q. So as I understand it, I am
7 concluding from your answer that it is MNR's intention,
8 in the course of the timber management planning
9 process, not simply to require everyone to come to some
10 central location, but rather to go out and specifically
11 elicit information for timber management planning
12 purposes in the course of that timber management plan
13 preparation process?

14 A. That's my understanding of the
15 commitment that is in here, particularly when it speaks
16 about dealing with the notices verbally. And, again, I
17 think that is a particularly important issue when you
18 are dealing with those remote northern communities.

19 Q. All right. As an alternative in some
20 cases in places that -- well, let me back up. What are
21 you talking about when you say remote northern
22 communities? What area would that cover within the
23 area of the undertaking?

24 A. Generally I am referring to the ones
25 where there is no normal road access.

1 Q. All right. Let's take the next class
2 down then which is the areas where the plan preparation
3 would require significant road travel in order for
4 members of that community to participate in that
5 process.

6 Does MNR have any commitment -- have you
7 made any commitment to go out and take that process out
8 to those people as opposed to having them have the
9 problem of travelling to you?

10 A. I am not sure how it is written in
11 this document. I am aware of commitments the Ministry
12 has written in letter form, I believe to NAN, saying
13 that for -- we will come to review and talk about
14 forest -- or timber management planning in your
15 community any time we are requested.

16 Q. All right. But, again, I am asking
17 in the sense of proactive information gathering stage,
18 draft plan, final plan, major amendment.

19 Is that commitment proactive to go out
20 there and say: Here are the kinds of things we think
21 we need for timber management planning purposes. Are
22 they enough? What else, if any, do you think we need
23 and what information can you give us?

24 Do you intend to do that in a proactive
25 way, starting with the information gathering stage?

1 A. I am not sure I can, I guess, commit
2 the Ministry to that. In terms of participation in the
3 process, I guess I don't have problems with that, but I
4 guess why I am a little hesitant on it is a parallel to
5 the data gathering exercise that occurred in Moosonee
6 and whether -- I think what you are seeking, or part of
7 what you are asking is whether the Ministry would
8 commit itself to here now or would I care to commit the
9 Ministry to that kind of an inventory process for each
10 and every --

11 Q. Well, you are the expert that is here
12 on information gathering and I guess what I am seeking
13 from you is simply agreement that an effective
14 information gathering exercise in relation to
15 communities which involve the longer travel distance or
16 are more remote might well require the users of that
17 information to actually go out to that community and
18 seek out that information in a way that that community
19 is comfortable with, as opposed to just sending them a
20 notice and saying: Come out to an open house.

21 A. Worded that way, that seems
22 reasonable.

23 Q. All right. Now, again, I am taking
24 that not that you are committing MNR necessarily to do
25 that - although I would be happy if I was wrong in

1 that - but you are at least saying that, as a person
2 who is experienced in information gathering and has
3 expertise, that that is a desirable thing to do?

4 A. Yes.

5 Q. Yes, it is desirable. And I take it
6 you are not though committing MNR to do it?

7 A. Right on both counts.

8 Q. Okay, thank you. Now, in cases where
9 MNR invites people to come and give them information
10 for timber management planning purposes and there is
11 travel and lodging involved, if someone is going to
12 take up that opportunity, are you aware of whether it
13 is MNR's proposal to pay travel, food and lodging
14 expenses for participation under those circumstances in
15 order to obtain the necessary information for timber
16 management planning purposes?

17 A. It is not the Ministry's intention,
18 to my understanding.

19 Q. Mr. Kenrick, again drawing on your
20 expertise as someone who collects this kind of
21 information, I take it that you would be aware of
22 methods used by other proponents in gathering that kind
23 of -- in gathering information for planning purposes?

24 You would have some knowledge of that?

25 A. Yes. I have read material and been

1 at other people's events, if you will, for collecting
2 information.

3 Q. And are you aware that there are
4 proponents involved in information gathering exercises
5 who do have a policy of providing travel, food and
6 lodging expenses for participation in those exercises
7 and in places where the travel distances involved are
8 substantially less than they are in northern Ontario.

9 Are you aware of that? Are you able to
10 confirm that that is the case?

11 A. Well, I have been involved with one
12 such group for Ontario Hydro, but it was more like a
13 working group. As I recall, the people who were
14 non-government that sat on that did have their expenses
15 covered while they were doing it, but it was a group
16 that met recurring and it was more like a working group
17 rather than trying to go into a community and talk to,
18 say, 50 people in the community.

19 Q. But taking that particular instance,
20 that is one where one of the key purposes of bringing
21 that group together is information gathering?

22 A. Yes, the ones I was involved with.

23 Q. And are you aware -- I am sorry.

24 MR. MARTEL: Could I ask a question? Did
25 MNR not at one time in fact have a policy of meeting

1 expenses for their advisory bodies that existed up
2 until about five years ago, six years ago?

3 MR. KENRICK: What you are referring to I
4 believe is what used to be called a district foresters
5 or district managers advisory committees.

6 MR. MARTEL: Yes.

7 MR. KENRICK: Yes. Again, that was like
8 a working group that sat on a regular basis as opposed
9 to -- and I interpreted this line of questioning to be
10 talking about the invitation to participate, the review
11 of the draft plan and the three or four public
12 notices -- the four public notices that are referred to
13 in this document.

14 MR. CAMPBELL: Q. Well, let me put my
15 question this way then. Say we have a community that
16 is remote, there is some travel, say, overnight travel
17 that would be required in order to attend. There was
18 road access but it would require overnight travel in
19 order to attend an advertised open house, say, for
20 information gathering purposes.

21 If the community was to say: We would
22 like person "x" to go as our representative, he will
23 coordinate with the members of the community, bring
24 back the kinds of questions that you are asking,
25 undertake to do some work to provide the kind of

1 information that you are seeking.

2 Is that the kind of circumstance where
3 you would give some consideration to covering expenses
4 for that kind of participation, given that the
5 community and some particular membership in that
6 community was prepared to make a commitment to see the
7 process through?

8 Wouldn't that facilitate just the kind of
9 information and involvement that you are seeking?

10 A. That is true. I am just not aware of
11 a mechanism right now for doing that. In a case like
12 that where there was an interest in the community and
13 it was a major project, I think my suggestion back
14 would be we would go to the community.

15 Q. All right. I would believe that is a
16 preferable course of action in any event, so I am
17 perfectly satisfied with that answer.

18 All right. Now, if I can extend beyond
19 the information gathering stage a little bit. Would
20 you agree, using native communities as an example, that
21 it would be a good idea to provide draft timber
22 management plans, timber management plans, proposed
23 major amendments to the more remote communities so that
24 they could be reviewed in that case, if it is a native
25 community, say, by band councils and elders within

1 their community, as opposed to having to bring the
2 community to the plan as it were?

3 A. I guess that's one solution to it,
4 sending the document. I guess what I would be a little
5 concerned with is a proliferation with groups that all
6 felt they were remote and we soon get in to having to
7 produce 4- and 500 copies of the forest management
8 plan.

9 They are getting to be pretty horrendous
10 documents as it is.

11 Q. Well, surely the principal objective
12 should be good participation in the development of the
13 plan. That surely, I would suggest to you, is an
14 objective with higher priority than worrying about
15 making an extra few copies?

16 A. That's true. I would like to find a
17 cost effective way of doing it, that's all I am
18 qualifying it with. It may well be that if there is an
19 issue in that community that can be identified and it's
20 a portion of the plan, then we can deal with the
21 portion of the plan.

22 Q. All right. But what I am suggesting
23 to you is with respect to the land base, for instance,
24 that might be associated with the native community with
25 respect to anything that relates to the land base,

1 would you agree with me that it would be a good idea to
2 provide draft material to those more remote communities
3 so that in the case of native communities they can be
4 reviewed by the band council and elders and others who
5 have the real potential to have significant knowledge
6 about that land base?

7 A. That would be one approach.

8 Personally, I would take the document and go in and
9 make a presentation to, say, the elders and the chief
10 or a community meeting in that case.

11 Q. All right. So if I can understand
12 your answer, your question isn't so much -- you take no
13 issue with the purpose of that kind of an approach, it
14 is just that you think there may be better ways that
15 are more appropriate to involve that community; is that
16 correct?

17 A. Yes. If your general question is:
18 Should the Ministry do everything it can to solicit
19 meaningful input into the process, the answer is yes.

20 Q. All right. And you would agree, I
21 take it, based on your previous answers, that
22 soliciting meaningful input may require you to tailor
23 the opportunity for that input to the characteristics
24 of the community?

25 A. That's correct.

1 Q. All right. Now, Mr. Kenrick, I want
2 to turn to the area of your evidence that dealt with
3 MNR's dealing with stakeholders.

4 In your evidence you indicate that MNR
5 deals with a variety of interests, you identify the
6 Ontario Mining Association at page 103, tourism groups
7 at page 116, hunting interest groups at page 127,
8 groups representing Crown land users, page 138 in your
9 evidence.

10 In short, there are a whole variety of
11 interests that you have to deal with; is that correct?

12 A. Correct.

13 Q. Would you agree that there can be a
14 significant difference of opinion as to how timber
15 management can affect the environment depending on the
16 particular interest of each stakeholder?

17 A. Most certainly.

18 Q. All right. I would like to take an
19 example from your evidence. Would you agree that the
20 quality of hunting and fishing is a significant concern
21 to residents within the area of the undertaking?

22 A. Yes.

23 Q. And would you agree that the quality
24 of hunting and fishing is also a significant concern to
25 tourist operators within the area of the undertaking?

1 A. Correct. They may both be residents
2 also.

3 Q. Yes, there may be some overlap as
4 well. Now, you described in your evidence the conflict
5 between the development of roads into remote areas on
6 one hand and remote facilities on the other. You recall
7 identifying that as a conflict?

8 A. Yes.

9 Q. And you described that at page 116 of
10 your evidence; page 116, that is, of Exhibit 209. I
11 would just like to read the second complete paragraph
12 that I am referring to in respect to this conflict.
13 You state that:

14 "The remote tourism industry feels that
15 roads and the public access they
16 generally bring are an unnecessary
17 intrusion into remote areas used by their
18 guests. Operators of remote camps feel
19 that it threatens their very existence.
20 Needless to say, a great many residents
21 of Ontario, particularly in local
22 northern communities, want access to
23 these same resources."

24 I take it that, again, you would agree
25 that the conflict that you are identifying there arises

1 between the two groups, the residents and the tourist
2 operators, because they are seeking the benefits of the
3 same values, be they tourism values, hunting and
4 fishing values, remoteness values?

5 A. Yes.

6 Q. Now, you go on in paragraph 3 on that
7 page to say this:

8 "Progress on this issue is being made
9 through continuing dialogue."

10 Do you see that?

11 A. Correct.

12 Q. And you say that:

13 "The most notable example is the joint
14 timber industry/tourism industry
15 involvement in the production of the
16 Timber Management Guidelines for the
17 Protection of Tourism Values."

18 Now, looking at that notable example,
19 those guidelines, as I understand it, are filed as part
20 of the Panel 8 evidence and it looks like this; is that
21 correct? (indicating)

22 A. That's correct.

23 MR. CAMPBELL: That, Mr. Chairman, is
24 reference No. 32 to Panel 8. I do not propose to file
25 it now, although I will be referring to it in a general

1 sense.

2 Q. Now, with respect to those
3 guidelines, the document -- I would ask you to accept,
4 if you are not familiar with it, I would ask you just
5 to accept that the document makes it clear that the
6 parties to the production of that document were the
7 Ministry of Natural Resources, the Ministry of Tourism
8 and Recreation, the timber industry and the tourist
9 industry; is that correct?

10 MR. KENRICK: A. I believe so, yes.

11 Q. Now, I don't want to review the
12 guidelines themselves, but I do have a question for you
13 as to how it is possible to conclude that progress can
14 be made -- progress is being made on this issue of a
15 conflict between local residents and tourist operators
16 when - and this is a notable example - when, as I
17 understand it, there was no representation on behalf of
18 the local residents in the development of those
19 guidelines?

20 A. Well, to some extent the agent -- the
21 Crown represented the public generally in some of those
22 discussions.

23 I guess where I see the progress in that
24 document is, traditionally the argument has been
25 polarized. Each of those groups increasingly have been

1 less tolerant of the other group's use of the resource
2 and quite frequently it became polarized: All roads
3 open and public; no roads. There was very little in
4 terms of middle ground there.

5 That document, through those discussions,
6 in my mind, opened up a lot more middle ground that
7 seemed to be acceptable to the two groups and since
8 that document has been in use, we found some of those
9 solutions to be more acceptable to some local
10 communities - I do see it as progress - regardless of
11 who sat on the actual group that was forming them.

12 Q. Do you really think that local
13 residents would be reassured by your view that the most
14 notable example of dialogue and progress on this issue
15 appears to have excluded any participation in the
16 process on behalf of the interests of local residents
17 or by those local residents?

18 Do you really think they would be
19 reassured by that view that that is a notable example?

20 A. There are probably some local groups
21 who would not be assured.

22 Q. Would you agree with me that when one
23 is trying to work out something like that, for the
24 purpose of accommodating a variety of interests of the
25 type you have identified, that it would be desirable to

1 ensure that all of those interests are represented at
2 the table?

3 A. Generally, yes. I guess my feeling
4 is that with the make-up of the committee, I am making
5 the assumption that we felt that the breadth of the
6 issues were covered.

7 Q. I take it that's your view that you
8 are satisfied -- or your suggestion that MNR
9 participation, in effect, covered off that local
10 residents' interest; is that what you are saying?

11 A. Yes.

12 Q. I have a little concern about that
13 when isn't it MNR that puts up those gates that the
14 local residents take such umbrage about; do you really
15 think they are going to see you as representing their
16 interests?

17 A. We don't put up a lot of gates to
18 start with.

19 Q. Well, that's the shibboleth that
20 everyone talks about gated roads, let's say, start with
21 that.

22 But I leave my question the way it
23 stands, do you really think that the local residents
24 who have those concerns and see MNR as the enforcer in
25 preventing them using roads that they might want to

1 use, do you really think that they see MNR as
2 representing their interests?

3 A. I guess my experience has been it
4 very much depends on what decision is reached. If the
5 decision is to defend keeping roads public, then we get
6 viewed as very much representing their interests.

7 If, in a particular case, it is felt that
8 the best solution is to use a gate, then we get accused
9 of representing somebody else's interest.

10 Q. And doesn't that exactly illustrate
11 why, in the development of documents like that, it
12 would be useful that they ensure that all of those
13 interests are represented by people who can truly be
14 said not to have a conflict in interest on the matters
15 under discussion?

16 A. Generally, yes.

17 Q. Now, in terms of the conflict that
18 you have identified between local residents, tourism
19 operators, would you also agree with me that one
20 approach that -- let me put it to you this way:

21 My perception is that in terms of that
22 conflict that the land base that is reasonably
23 accessible is probably sufficiently large that it can
24 accommodate both of those separate interests and the
25 trick is to ensure that within a reasonably accessible

1 area there can be both remote wilderness type
2 experiences and access for local residents and that
3 that can be achieved simply by physical separation as
4 long as there are opportunities provided for both
5 groups?

6 A. True. Sometimes it is a little hard
7 to maintain that physical separation. The area that
8 gets complicated -- or making life more complicated are
9 things like the use of ATVs, that you physically create
10 a buffer to keep the two uses separate and shortly
11 later the buffers got little trails all the way through
12 it, and that's a frequent phenomenon across the north.

13 Q. And that may be a function of the
14 size of the more isolated area that you have to create
15 an access and so on, but that that kind of planning
16 goal of providing those different uses to each of the
17 communities that want to take advantage of their
18 particular sense of values is not something that is
19 impossible to try for from a planning point of view;
20 in fact, it makes good sense to try for it from a
21 planning point of view?

22 A. Correct. There is, just by way of an
23 illustration in an area that I am familiar with, where
24 instead of closing down road systems completely and,
25 hence, to protect the remote nature of one lake, an

1 area much larger than the area of the lake that the
2 public was denied access to.

3 What appears to have struck somewhat of a
4 balance between those two interest groups is a system
5 whereby we used signs instead of gates and the signs
6 said that the road can be used, but it couldn't be used
7 to access a particular lake.

8 Now, there is an area that's a little
9 gray there in terms of a person accessing the backshore
10 adjacent to the lake, but where it is a fishing issue,
11 and it is rather black and white, the person is either
12 on the water fishing or they are not.

13 That seems to have been effective and, in
14 the case I am thinking of, there was some support both
15 from the commercial tourism group and from the local
16 group that wanted access to the water, to the area
17 generally. That road system also opened up other water
18 bodies, that there were some alternate opportunities
19 created with the road system.

20 So there are some places that those kinds
21 of solutions will work.

22 MR. CAMPBELL: Mr. Chairman, I should
23 caution the Board that I don't want taken from my
24 questioning a suggestion that the guidelines about
25 which I was asking questions do not recognize, to some

1 degree, those local residents' interests.

2 My questions were purely aimed at the
3 process of arriving at them and are not intended in any
4 way to be taken as a comment on the merits or otherwise
5 of the actual content of those guidelines. That matter
6 is going to be dealt with later on.

7 Q. Now, Mr. Kenrick, as we have been
8 talking about, one element of the environment affected
9 obviously relates to tourism; is that correct?

10 MR. KENRICK: A. Correct.

11 Q. And your estimate of direct tourism
12 expenditure is approximately \$827-million? I have a
13 reference for that somewhere, but ...

14 A. It is the 10 per cent of the
15 provincial figure, yes, roughly.

16 Q. Well...

17 A. Direct tourism expenditures in
18 Northern Ontario, 829 --

19 Q. It is 829 and it is page 111?

20 A. That's correct.

21 Q. All right. Now, if I understand your
22 evidence correctly, that expenditure in total
23 represents three categories of use. First of all, the
24 local user, I guess provided they travel over 40
25 kilometres; is that correct, that would be the first

1 category?

2 A. The local user, mm-hmm.

3 Q. And does the local user only kick in
4 in that number if they travel over that 40 kilometres?
5 There was some discussion of a limit of travel before
6 they would be caught.

7 A. The numbers differ and I am just not
8 sure which one of the numbers went into this number.

9 Q. All right. Well, 40 kilometres in
10 this territory is not a long way in any event. So
11 let's simplify it and just ask you if you would agree
12 that there are basically three categories of use.
13 There is the local user, the remote camp user, and the
14 lodge or hotel user, that those three categories give
15 rise to the expenditures which total \$829-million; is
16 that correct?

17 A. I don't think those categories you
18 have used are mutually exclusive of one another.
19 Locals go and stay at remote tourist camps, they stay
20 at lodges. If I had to pick categories, I would say
21 locals, non-locals, residents of Ontario and
22 non-residents of Ontario would be a -- if I had to
23 categorize them, that's the way I would do it.

24 Q. Well, let me just back up because I
25 thought I was kind of adopting a distinction that you

1 had made in your evidence was that with respect,
2 particularly for instance to this issue of road access,
3 if you try and relate that 829-million to the use of
4 access roads into areas where there were tourism values
5 be they hunting, fishing or anything else, they would
6 fall, would they not, into the category of local users,
7 remote camps and lodge or hotel users?

8 A. I am missing some point. You seem to
9 be mixing accommodation, those people that stay at
10 remote camps, those people that stay at lodges, and
11 those people that camp or stay at home.

12 Q. You are right, you are exactly right.
13 I guess my three categories that I am trying to sort of
14 get a handle on are really people either are lodge or
15 hotel users, they have one interest in road access
16 which you identify in the document; remote camp users
17 which have another interest in access issues as you
18 identify in the document; and then there is people who
19 go out there for that experience, whatever it is, and
20 may either camp or not, be remote camp users or lodge
21 or hotel users.

22 I guess those are the three categories I
23 am looking at. Wouldn't that capture everybody?

24 A. More or less. I am still not--

25 Q. Let me try it a different way.

1 A. --too supportive of your categories
2 there, but...

3 Q. Let me try it a different way. Road
4 access is one of the environmental effects of timber
5 management; is it not?

6 A. Correct.

7 Q. And I guess there are three sort of
8 basic approaches to that question of road access.
9 There is the group that wants access to all of the
10 roads that are financed by public funds and are very --
11 they tend to be local residents, but they may not be
12 local and they may be from other areas as well and they
13 are saying--

14 A. Generally.

15 Q. --public money paid for these roads,
16 they ought to be available to everybody. That is one
17 group; is that correct?

18 A. Correct.

19 Q. And then there would be another group
20 that would be the remote operators who want that access
21 restricted so as to enable him to market that element
22 of remoteness?

23 A. That's correct.

24 Q. And the third group would be lodge or
25 hotel operators who want roads, if anything, upgraded

1 and generally want roads to support their operations;
2 that would be the third group?

3 A. Yes. In terms of their interest,
4 they probably fell into one of the first two -- one or
5 the other of the first two categories you made.

6 They either would share a similar
7 interest with locals because their business was
8 dependent on road access and, therefore, would like
9 improved road access, or it would be a main base lodge
10 that was nonetheless remote, in which case they would
11 probably oppose road access.

12 Q. All right. I guess my point is
13 simply to ask you whether you would agree that in order
14 to assess how the undertaking will affect the level of
15 expenditure of \$829-million, isn't it correct that you
16 would have to consider the effect on that level of
17 expenditure in relation to both the type of road access
18 and the type of user who is associated with that type
19 of road access?

20 If you say no access, you are making an
21 economic decision, are you not, that that remote
22 operator's interest is going to be paramount and that
23 has one set of economic consequences; does it not?

24 A. Correct.

25 Q. And if you make a decision that

1 anybody can use any of the roads, that will have
2 another economic effect; will it not?

3 A. That's correct.

4 Q. And if you issue land use permits for
5 large base lodges in remote locations and allow that
6 access to be used both for that purpose and for all
7 other public access, that gives rise to another
8 economic consequence?

9 A. Correct.

10 Q. And in each case those are different?

11 A. That's correct.

12 Q. And if you take it on an undertaking
13 wide basis, the selection of one choice over another
14 would make a difference in the economic activity which,
15 as it is currently being done, is \$829-million?

16 A. That's correct.

17 Q. So that isn't it fair for me to
18 conclude then that the advantages and disadvantages of
19 the undertaking, insofar as they relate to economic
20 choices, will be quite different depending on which
21 user group gets priority or the mix of policies that
22 are applied to the use of those access roads?

23 A. I think there are two things that
24 could be affected, the mixture of uses that get to use
25 the roads or the mixture of the roads may well affect -

1 I would prefer not to look at it provincially, but say
2 that is a \$1-million figure tourism locally, it may
3 well affect the magnitude of that figure.

4 In other cases what it may do is change
5 the distribution of it. In other words, if the million
6 dollars was being generated at a remote camp pre-road
7 time, one possibility is that all of the people using
8 the area and the accessible camp that may well be there
9 in the future might generate more or less than a
10 million dollars, not based on our remote experience but
11 based on a road accessible experience.

12 Q. My point exactly. So you would agree
13 with me that in terms of economic advantages and
14 disadvantages, the choices you make amongst the
15 alternative methods of dealing with road access will
16 have different economic consequences?

17 A. Correct.

18 Q. Now, can I take it from listening to
19 your earlier evidence that you have not done any
20 analysis of the portion of the \$829-million of revenues
21 that would try and break down how much of that revenue
22 was dependent on this kind of policy or that kind of
23 policy?

24 A. I am not aware of any analysis that
25 has done that.

1 Q. All right. So I take it then that
2 you would agree with the general proposition that the
3 \$829-million figure by itself doesn't tell us much
4 about the environment affected by the undertaking, the
5 alternatives to the undertaking or the alternative
6 methods of carrying out the undertaking?

7 A. That's correct.

8 THE CHAIRMAN: Did you say, Mr. Kenrick,
9 that such an analysis has not been undertaken but did
10 you also imply that it will not be undertaken
11 throughout the rest of the hearing?

12 MR. FREIDIN: Correct, Mr. Chairman, it
13 won't be that type of analysis.

14 THE CHAIRMAN: Thank you.

15 MR. CAMPBELL: Q. Now, Mr. Kenrick, I
16 take it you would agree, however, that it is possible
17 to do that type of analysis?

18 MR. KENRICK: A. I am not sure it would
19 be at a northern Ontario level like that.

20 Q. Why not? You were able to, for
21 instance, indicate that the return per unit of capital
22 invested was very high for remote camps. There is
23 obviously some pretty sensible reasons for that.

24 But if you can do that kind of -- you are
25 aware of those kinds of figures, why is it not possible

1 to make some estimate of the kinds of effects, from an
2 economic point of view, that will be associated if you
3 pushed harder in this direction than that direction?

4 I don't understand why it is not
5 possible.

6 A. I am just not sure how you -- the
7 policies you were referring to.

8 Q. Well, it could be a range of
9 policies; it could be policies relating to everything
10 from -- well, let's make it simple, just take access.

11 Presumably, remote camp operators would
12 be highly upset if you simply threw open all the roads.
13 That would have a direct economic consequence on them;
14 would it not?

15 A. So your scenario is the economic
16 consequence of accessing all remote areas in the
17 province?

18 Q. Yes, that is a policy choice that is
19 open to you, to use the timber access roads and simply
20 say the public may have access to whatever lakes and
21 rivers they go by without restriction.

22 A. I think you best ask an economist if
23 it is possible. I wouldn't see that kind of an
24 exercise as being very productive, quite frankly,
25 dealing with those extremes, but...

1 Q. Well, I agree we can push all things
2 to extremes, but I guess I will will take it down to
3 perhaps a more pertinent example. The routing of --
4 the choices you make in routing access roads costs you
5 money?

6 A. Yes.

7 Q. If you want to miss a lake with a
8 large buffer that might cost you more money than going
9 straight by the edge of the bay?

10 A. There is a cost to creating a longer
11 road, yes.

12 Q. And from an economic point of view,
13 isn't it pertinent in the course of doing timber
14 management planning to make some judgment as to whether
15 the economic benefits of additional road expenditures
16 which might be required to avoid an environmentally
17 sensitive area or a remote tourist camp are worthwhile,
18 given the economic benefits to be gained?

19 Isn't that just the kind of choice that
20 you have to make in the course of planning?

21 A. That's correct. I would just like to
22 qualify that with one item. I have been in situations
23 before where we have tried to use a pure cost/benefit
24 approach to making a decision, and it has been one
25 where longer road versus the location or loss of

1 business to a tourist camp.

2 And, from my experience, that whole
3 exercise has been nothing but frustrating, largely
4 because we couldn't get the two parties to agree on the
5 assumptions in the cost/benefit analysis in the first
6 place.

7 Q. Well, you won't hear us arguing for
8 any single approach to be used in its entirety or to
9 the exclusion of all others in making choices, but we
10 have had a variety of economic evidence put before this
11 Board, presumably because there can be affects on that
12 economic environment--

13 A. That's correct.

14 Q. --the same as there can be affects on
15 the natural environment; is that not correct?

16 A. Correct.

17 Q. And surely some attempt should be
18 made when planning to focus on the tradeoffs, the
19 advantages and disadvantages, from an economic point of
20 view, with respect to the alternative methods of
21 carrying out that undertaking. Is that not a
22 reasonable thing to do?

23 A. Yes.

24 Q. But, as I understand it, there is no
25 attempt to do that with respect to this tourism

1 particularly?

2 A. No. I am aware where we have been
3 dealing in a particular forest management unit with a
4 particular road and its impact on a particular tourist
5 camp where there have been attempts to use that along
6 with other methods of evaluating the cost of making the
7 decision.

8 MR. FREIDIN: Mr. Chairman, if I could
9 just sort of rise and perhaps deal with some of my
10 friend's concerns.

11 When I got up and said there won't be any
12 analysis done of the type indicated, what I should have
13 probably said is it is because the Ministry's position
14 is that those kinds of issues are more properly
15 resolved at a local level and can be more properly be
16 dealt with at the local level.

17 MR. CAMPBELL: Well, Mr. Chairman, Mr.
18 Freidin gets to his feet regularly and says that. We
19 are dealing, however, with a Class EA that relates to a
20 very large area of land and surely there is some
21 necessity to take a look at what this proposal can mean
22 with respect to economic and all other manner of
23 choices across the whole area of the undertaking, not
24 just looking at the individual small areas.

25 I mean, to use what in this hearing is a

1 terrible analogy, if we spend too much time looking
2 just at individual trees we may very well miss the
3 shape of the whole forest, and that is the concern that
4 I am raising here.

5 Surely it isn't enough to simply look at
6 all of these issues only in the context of their local
7 manifestation with no consideration to the effect
8 overall of the options and alternatives that are
9 available to us.

10 And so I just want to put on the record
11 that I think I couldn't disagree with Mr. Freidin more
12 strongly on this matter. There is a need to look at
13 the choices that are being made, the choices that are
14 available and say: Overall, in the area of this
15 undertaking, what is the cumulative effect of making
16 those choices.

17 THE CHAIRMAN: Well, it may go even
18 beyond that in that there may be a statutory
19 requirement to do so. However, that could be argued
20 at some future time.

21 MR. CAMPBELL: Now, Mr. Chairman, I have
22 one -- I could probably finish in 15 or 20 minutes and
23 I don't know whether you want to do that or whether you
24 want me to continue in the morning.

25 THE CHAIRMAN: Is that just to finish Mr.

1 Kenrick or finish the panel?

2 MR. CAMPBELL: Finish the panel.

3 THE CHAIRMAN: I think we will continue.

4 MR. CAMPBELL: Q. I want then to sort of
5 again turn to another aspect of information gathering
6 with you, Mr. Kenrick, on effects and this relates
7 really to -- it is both to the level of detail of the
8 information that you propose to collect for timber
9 management planning purposes and, to some extent, it
10 will touch on the method of collecting that data as
11 well.

12 And the example I want to use - I think I
13 can think of some others - but the one I think I want
14 to use is trap lines and, as I understand it, you
15 explained that a trap line in MNR terms is an area of
16 land; is that correct?

17 MR. KENRICK: A. Yes.

18 Q. And the trapper within that area,
19 would you agree, follows a fairly well-defined route
20 around that area in carrying on the activity of
21 trapping and that is why it has got the name trap line
22 because he has a line of traps and follows a fairly
23 well-defined route in carrying out that activity?

24 Is my understanding correct?

25 A. Generally, yes.

1 Q. This is dangerous territory for
2 somebody who lives near Yonge and Lawrence.

3 MR. FREIDIN: Some people might not know
4 where that is.

5 MR. CAMPBELL: Well...

6 MR. FREIDIN: Or care.

7 MR. CAMPBELL: That is the more important
8 point, surely.

9 Q. All right. Then trap lines, as I
10 understand it, are registered with MNR?

11 MR. KENRICK: A. Correct.

12 Q. And MNR maintains a record of
13 ownership of trap lines?

14 A. The registered owner of the trap
15 line, yes, registered user of the trap line, if you
16 will.

17 Q. All right. But, in any event, MNR
18 maintains a record of those people?

19 A. Correct.

20 Q. And I would like to just make sure
21 that my understanding of what a trap line entails is
22 reasonably accurate.

23 If I understand your figures correctly,
24 the average size of a trap line is something that
25 ranges kind of between 32 and 72 square miles and some

1 go up to several hundred square miles in the northern
2 part of the undertaking; is that fair?

3 A. Yes, generally.

4 Q. A trap line generally involves a
5 cabin, sort of is a home base for the trapper and, in
6 fact, there could be more than one cabin?

7 A. It may or may not, it would depend
8 how remote the trap line is. It can involve a cabin.

9 Q. All right. And in cases where it
10 does involve a cabin, the tenure for locating that
11 trapping cabin on that particular location is granted
12 pursuant to a land use permit?

13 A. Usually yes.

14 Q. And trapping cabins are an area of
15 concern in timber management planning? I can give you
16 a reference for that if you need one.

17 A. Okay.

18 Q. I think it will be found listed in
19 potential areas of concern in Exhibit 5A, trap lines
20 and trapping cabins. But they are -- you would expect
21 that if you are doing -- if MNR is identifying areas of
22 concern, it should identify trapping cabins?

23 A. Correct.

24 Q. And the location and ownership of
25 both the trap line and associated cabins are known to

1 MNR obviously through this permitting system?

2 A. Yes.

3 Q. Now, other elements of the
4 infrastructure, if I can call it that, of the trap line
5 exist as well; do they not?

6 Let me give you an example. For
7 instance, the route around the trap line will consist
8 of a system of trails, portages, lakes, rivers and so
9 on, boat caches, canoes around the circumference of the
10 trap line?

11 A. Yes, that may not be easily
12 identifiable in many cases. It may be that the trap
13 line is accessed by a canoe, so really what you are
14 talking about is lakes that are there.

15 Q. All right. But there would be cases
16 where there would be a system of trails and portages,
17 lakes, rivers in combination?

18 A. Yes.

19 Q. And some will have more lakes and
20 rivers and some will have more trails?

21 A. Yes.

22 Q. And would you agree as well that with
23 respect to trails and portages, that they are sometimes
24 used by other members of the public for hunting and
25 fishing, canoeing purposes?

1 A. Yes.

2 Q. Now, if you are looking at -- would
3 you agree as well that if you are looking at this
4 through the eyes of the trapper, that the establishment
5 of that infrastructure of trails and portages,
6 particularly where of course they exist, the
7 establishment and maintenance of those trails are very
8 costly for that trapper in the sense that he makes a
9 great investment in them and that is a time consuming
10 investment for the trapper?

11 A. It may be, a lot of effort.

12 Q. All right. I am prepared to -- well,
13 to the extent that -- maybe I should get a little more
14 specific. To the extent that trails and portages are
15 required to be developed by that trapper for the
16 purposes of running the trap line, there is a great
17 deal of personal effort and work that goes into that?

18 A. Yes.

19 Q. And that that -- surely that is as
20 much an investment as a cash investment, looking at it
21 through the eyes of that trapper?

22 A. Looking at it through the eyes of the
23 trapper, yes.

24 Q. Would you agree that in an
25 operational sense where those trails and portages,

1 where he has made that great personal effort, are
2 essential to the operation of his trap line?

3 A. For a period of time, yes.

4 Q. What do you mean for a period of
5 time?

6 A. Well, it may well be that he would
7 use one route to access a group of water bodies for
8 three years and then abandon them and give that portion
9 of his trap line a rest and cut some more trails
10 somewhere else. He may change from winter to summer
11 trapping on the line for a couple of years depending on
12 the fur he was after.

13 Q. All right. But he views -- surely,
14 again, the trapper views those trails in which he has
15 made an investment of effort as -- he does that because
16 he sees that as essential to the operation of his trap
17 line?

18 A. Yes.

19 Q. Now, in information gathering for
20 timber management planning purposes, is there any
21 mandatory requirement for MNR to contact the trapper to
22 determine those trail locations, and I will include
23 portages and trails? If I leave one or the other out,
24 I mean both in all cases.

25 A. It is not one of the groups that is

1 specifically listed in the invitation to participate,
2 but in most districts I am aware of - and this is more
3 applicable perhaps when we get down to the five-year or
4 the annual work schedule where you know that the impact
5 or the actual road construction or access is going to
6 be, you know, the location specific on a trap line - in
7 most cases those trappers are contacted.

8 Q. All right.

9 A. But the word mandatory is one I -- I
10 don't think it is mandatory.

11 Q. All right. Do you think it is
12 reasonable for MNR to be required to attempt, on a
13 proactive basis, to contact trappers who have put that
14 effort into that trail and portage infrastructure in
15 order to determine those trail locations so that they
16 can be dealt with as an area of concern for timber
17 management planning purposes?

18 Is that a reasonable proposition?

19 A. As the manager, I would like to find
20 a way of getting in touch with them collectively. I
21 just wonder -- I think what I hear is contacting
22 everybody individually and personally that you think
23 has an interest within the area of the forest
24 management activity.

25 Q. That is exactly what I am suggesting.

1 A. That is what I thought you were.

2 Q. I am suggesting that that trapper has
3 a significant investment in that infrastructure and
4 what I am suggesting is: Isn't it reasonable - and I
5 would like you to answer my question - isn't it
6 reasonable for MNR to at least be required to make an
7 attempt proactively, not preactively but proactively,
8 to contact those trappers to identify where that
9 investment is on the trap line so that it can be dealt
10 with under the area of concern process?

11 A. If it impacts upon -- I think you are
12 overestimating the trail portion is I guess where I am
13 having trouble with it. If I thought the operations
14 were going to affect a trap line and a person's cabin,
15 I would notify him. That is reasonable.

16 Q. All right. And you are using trap
17 line in the sense of the area of the trap line; are
18 you?

19 A. That's correct.

20 Q. So that if timber management
21 operations were going to be conducted within the area
22 of the trap line, you think it is reasonable to have
23 MNR proactively attempt to contact that trapper for the
24 specific purpose of identifying trails and portages?

25 A. That would seem reasonable.

1 Q. Finally, at page 91 of your document,
2 you indicate that with respect to historical and
3 archaeological sites, the statement is made in the
4 middle -- in the second paragraph:

5 "Logging generally avoids or has limited
6 impact along major water courses,
7 therefore, the vast majority of sites
8 are unaffected by the undertaking."

9 Could you give me some parameters as to
10 how you define a major water course?

11 I take it from the bottom of the previous
12 paragraph that you are at least speaking of lakes and
13 rivers because you put forward the proposition that a
14 detailed examination of the majority of historical and
15 archaeological sites would show them to be generally
16 adjacent to long use travel corridors or lakes and
17 rivers.

18 So that in terms of major water courses,
19 can I take it that we are at least talking about lakes
20 and rivers?

21 A. Correct.

22 Q. And where do you -- in terms of major
23 water courses, how do you define what is a river, what
24 is -- you know, what kind of parameters are you talking
25 about when you talk about major water courses in terms

1 of lakes and rivers?

2 A. The statement wasn't used in a sense
3 of trying to give a precise definition of where the
4 lower end is.

5 The principle there, and it comes from
6 some days in Temagami country and some subsequent
7 conversations with Thor Conway, the reference there on
8 page 91, is that generally those types of sites that
9 are attractive to users now were probably attractive to
10 users 300 years ago.

11 Those areas that are attractive now have
12 a tendency to generally always end up with buffers and
13 modified management areas and reserves and such and,
14 hence, those buffers and modified areas and reserves
15 have a tendency to be protecting a major portion of
16 what would have been previous occupation sites,
17 archaeological sites.

18 Q. All right. So if I can just break
19 this down a little. In terms of major water courses,
20 other than those words, you can't help me any more in
21 terms of where the cut off might be?

22 A. No.

23 Q. And as I understand -- I guess you
24 then go on and say:

25 "There is a tendency to have those areas

1 protected by buffers..." et cetera, et
2 cetera.

3 I guess I am a little concerned about the
4 tendency to protect those and I would just ask you
5 directly whether you can direct me to any mandatory
6 practices or standards which allow you to make the
7 statement with confidence that logging has limited
8 impact on our historical and archaeological resources?

9 A. I am not sure of a scientific study.
10 I have asked again Thor Conway who is the regional
11 archaeologist in northeastern Ontario if the assumption
12 is valid.

13 Q. I am not taking any issue with the
14 assumption. What I am asking you is whether you can
15 direct me to any mandatory practices or standards which
16 support your view; that is, any mandatory standards or
17 practices in relation to logging which ensure that
18 instead of simply having a tendency to protect them,
19 you can in fact say that logging will have limited
20 impact on our historical and archaeological sites?

21 A. It doesn't address historical and
22 archaeological sites, but the Guidelines for the
23 Protection of the Fisheries Habitat, now that they have
24 been expanded to cover water quality concerns, I think
25 also adds some further protection that forestry

1 operations will occur less frequently adjacent to water
2 bodies.

3 Q. Are there any other mandatory
4 practices or standards which you can direct me to that
5 would ensure that the objective is achieved for
6 historical and archaeological purposes other than the
7 fisheries guidelines?

8 A. If the site was known ahead of time
9 and registered, I believe the person who caused any
10 damage to it would be charged under the heritage --

11 Q. I don't take this paragraph, with
12 respect, Mr. Kenrick, to be referring to registered
13 sites.

14 A. Correct.

15 Q. All right. I am talking about --
16 generally speaking with respect to the historical and
17 archaeological -- sites of high potential for
18 historical and archaeological sites, I don't disagree
19 with the proposition that they can be expected to be
20 along our lakes and rivers.

21 What my question is: Apart from the
22 fisheries guidelines, are there any other mandatory
23 practices or standards that you wish to point me to
24 which would give me an assurance that there would be
25 limited impact on historical and archaeological sites?

1 A. Not currently. What I am aware of -
2 and I am not sure if this is what you may be driving
3 at - but there is an agreement with the Ministry of
4 Culture and Communications to set up a working group to
5 produce some guidelines that will be a parallel to the
6 Timber Management Guidelines for the Protection of
7 Fisheries Values, only these would be Timber Management
8 Guidelines for the Protection of Heritage Resources and
9 those may well result in a set of standards and
10 guidelines that may be mandatory that will apply to
11 this process.

12 Q. All right. And you would take no
13 objection in principle to mandatory practices or
14 standards?

15 A. You mean in the same way that the
16 current guideline packages have, like the fisheries
17 one, have minimum standards for data collection, those
18 kind of standards?

19 Q. Those or any other mandatory
20 practices or standards. My question is much broader
21 than that, and is: Do I understand from your answer
22 that you take no particular objection to mandatory
23 practices or standards as a matter of principle?

24 A. Reasonable ones, no.

25 MR. CAMPBELL: Thank you, those are my

1 questions. Thank you, Mr. Chairman.

2 THE CHAIRMAN: Thank you.

3 Mr. Freidin?

4 MR. FREIDIN: Mr. Chairman, just a couple
5 of matters. First, seeing that tomorrow is probably
6 going to be the last day of September and that the
7 Board wished to have from the other parties, I think by
8 the end of September, where they wished to present
9 their evidence, that perhaps the people here, if in
10 fact they have got instructions in that regard, they
11 can do it tomorrow as opposed to, I guess, waiting
12 until the end of week and not being able to do it until
13 after the end of September.

14 THE CHAIRMAN: Okay. Certainly, the
15 Board will canvass briefly the members of counsel and
16 the other parties who are here to find out if they have
17 that information, otherwise they will be sending it in
18 to the Board, I believe, through a written or telephone
19 communication by the 30th.

20 MR. FREIDIN: Mr. Chairman, because, as I
21 understand it, the only matter left for this panel is
22 re-examination, I would like to suggest that the Board
23 not reconvene until 10:05 tomorrow morning.

24 MR. CAMPBELL: I support that motion.

25 THE CHAIRMAN: What is the significance

1 of the 05 part?

2 MR. FREIDIN: I hoped you would say that.
3 I wanted to make the possibility of doing something
4 different uncontrollable and 10:05 would be really
5 different as opposed to ten o'clock.

6 But I think it may be that you will
7 understand, because of the festivities of the evening,
8 I think ten o'clock might be appropriate. I don't
9 think I will be much longer than -- I think we will
10 finish before noon, that is for sure.

11 THE CHAIRMAN: Okay. Obviously, we will
12 not finish prior to the departure of the morning flight
13 so, therefore, I suppose we can start at 10:05.

14 MR. FREIDIN: Thank you, Mr. Chairman.

15 MR. CAMPBELL: Mr. Chairman, I am
16 assuming that the witnesses are attending Mr.
17 Colborne's gathering tonight and--

18 THE CHAIRMAN: They cannot speak to
19 anyone, right?

20 MR. CAMPBELL: Well, that was just the
21 matter that I wanted to raise.

22 I would like to suggest that the
23 inappropriateness of counsel talking to witnesses be
24 suspended for the evening, recognizing that I have
25 absolute confidence that Mr. Freidin will not take

1 undue advantage of that opportunity, but given that it
2 is a social occasion, I think there should be some
3 relaxing of that, what we all view as a pretty tough
4 rule.

5 THE CHAIRMAN: And I take it that
6 tonight, with all of us attending, we will hopefully
7 find other things to talk about other than this
8 hearing.

9 MR. CAMPBELL: Exactly.

10 MR. FREIDIN: Here, here.

11 THE CHAIRMAN: So on that basis --

12 MR. CASSIDY: I can think of a few other
13 things I would rather not talk about than that too.

14 THE CHAIRMAN: Well, there are some
15 things related to this hearing, Mr. Cassidy, that we
16 will have to canvass.

17 Anyways, we will see everybody later
18 tonight and we will adjourn until 10:05 tomorrow.

19 Thank you.

20 ---Whereupon the hearing adjourned 5:45 p.m., to be
21 reconvened on Wednesday, September 28th, 1988,
commencing at 10:05 a.m.

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